POLITICAL INFLUENCE ON THE FEDERAL COMMUNICATIONS COMMISSION'S RULEMAKING ON UNIVERSAL SERVICE FOR SCHOOLS AND LIBRARIES

By

PATRICIA FIGLIOLA LEWIS

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Patricia Figliola Lewis

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This dissertation examines the political influence within the telecommunications issue network during the schools and libraries portion of the Federal Communications Commission's (FCC's) universal service rulemaking. This rulemaking resulted in the "E-Rate Program" that provides schools and libraries with discounted Internet-related services. The overarching finding of this study is that current theory on the rulemaking process does not adequately explain this particular rulemaking. Further research is required to determine whether this study was out of the ordinary or not.

The primary theory used in this dissertation is issue network theory. This research supports the tenets of the theory (i.e., hollow cores, multiple niches, an importance

placed on expertise, and sloppy boundaries), but found other theories, specifically symbolic politics and mobilization of bias, could be used to support it.

This study also examines whether the rulemaking adhered to theories of rulemaking developed by Cornelius Kerwin and Scott Furlong. Kerwin writes that the agency conducting the rulemaking (1) must provide information to, and collect information from the public; (2) must encourage wide participation from diverse voices; and (3) can be held accountable for their rules. This study conformed to the requirements laid out by Kerwin, but further analysis demonstrates that even though the FCC appeared to adhere to the requirements of Kerwin's theory, the FCC had in large part predetermined its general course of action prior to the beginning of the rulemaking.

Furlong developed and tested the third theory used in this dissertation. Of the 7 criteria he believed affected groups' ability to influence rulemaking only forming coalitions and the level of access were significant in formal methods (e.g., rulemaking). The findings of this study generally support Furlong's findings.

CHAPTER 1
INTRODUCTION

President Clinton signed the Telecommunications Act[1] ("the Act" or "the 1996 Act") in February 1996, fundamentally changing the U.S. telecommunications policy environment. One of the Act's most important provisions codified and expanded the *ad hoc* national universal service policy developed and administered by the Federal Communications Commission (FCC).[2] This policy has enabled the incumbent local telephone industry to provide basic telephone service at affordable rates to the greatest number of American homes, regardless of location or income.[3] The policy has been achieved through access charges paid to the local telephone companies by long distance telephone companies and through geographic and line-of-business cross-subsidization by the local telephone companies themselves.

The origin of the "universal service" concept is usually attributed to the Communications Act ("1934 Act") that established the FCC and charged it with

> regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of

> the United States, a rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges."[4]

This language is vague, but universal service advocates relied on it for years to support their cause. The fact is, however, that universal service actually began as a marketing concept developed in 1907 by Theodore Vail, the president of AT&T at that time.

Rigorous telephone competition in the early 1900s had resulted in a number of incompatible, unconnected networks, requiring consumers to subscribe to multiple systems. Vail's intent was to eliminate competitors by offering consumers a single service that would have nationwide reach—universal service. Rather than demand competition in the telephone industry, the government accepted AT&T's assertion that it was a "natural" monopoly and instead passed the Communications Act of 1934, in part, to regulate that monopoly.

In the years leading up to the passage of the 1996 Act, public interest and educational groups, as well as the Clinton administration, advocated expanding the universal service concept to offer subsidies to a greater range of recipients, such as schools and libraries, and to provide services beyond "plain old telephone service"

(POTS) to those recipients. The 1996 Act did just that. It required not only that schools and libraries be included in the general universal service funding mechanism (i.e., to receive POTS), but that the FCC consider making other services available to these entities as well. To implement this requirement, the 1996 Act mandated that the FCC conduct an administrative rulemaking proceeding to consider comments from interested parties on this matter.[5]

In accordance with the 1996 Act, the FCC established a Federal-State Joint Board to develop recommendations on how to implement the statutory language. After receiving those recommendations in December 1996, the FCC released its Universal Service Report and Order in May 1997.[6] The rules included a requirement that schools and libraries receive $2.25 billion per year in discounts, based on need and location, on all telecommunications services, Internet access, and the internal connections needed to access those services within classrooms.

Many parties considered the FCC's rules to be a broad interpretation of the Act's requirements. Most industry members had expected the FCC to include only telecommunications services to schools and libraries, but nothing further.[7] A congressional staff member stated

that the FCC misinterpreted the legislative intent of the schools and libraries provisions.[8] A high-level FCC staff member, however, stated that the FCC had closely examined the legislative history of the provisions to ensure that they acted in accordance to the wishes of Congress.[9]

A likely explanation for how the statutory language was interpreted by the FCC is political influence. The possible existence of such influence raises highly relevant questions about how rulemakings are conducted, in this case at the FCC. First, what political influences were brought to bear on the FCC as it developed this policy? Are these influences constant over a variety of issues or do they change from case to case? Next, as discussed below, administrative rulemaking is considered one of the most inclusive and open processes of government, requiring that input be considered from all interested parties. Does the evidence support such an assertion in this case? Is the input of all interest groups considered equally, or are some groups "more equal" than others? This dissertation seeks to address these questions.

Purpose and Scope of Study

Independent administrative agencies are political entities and their interpretations of law are subject to political pressure: their commissioners are nominated by the President and confirmed by the Senate; their budgets are tightly controlled by the Congress. Any examination of the administrative process, therefore, must consider politics as an input to any administrative policy output.

Rulemaking by an agency, however, is *not* intended to be a political process. Indeed, the Administrative Procedure Act of 1946 ("the APA") was intended to eliminate a system fraught with political influence and favoritism and replace it with a process marked by openness and inclusion of all parties. Whether this has occurred in this case is a matter of debate.

The purpose of this study is to contribute to the debate and provide additional understanding of how administrative agencies, particularly the FCC, behave and how politics influences that behavior. Specifically, it is an examination of the political influence on the development of the FCC's universal service rules for schools and libraries. The study also examines how the FCC's rules were implemented and the politically-

motivated efforts both to reduce the funding for the schools and libraries program and to end the program altogether.

The scope of this study is limited in two ways. First, Chapter 5's analysis and conclusions concerning political influence address *only* the FCC's rulemaking process. They *do not* address the legislative process or the other activity before, during, or after the rulemaking. This study contains and discusses that data, including a legislative history of the Snowe-Rockefeller-Exon-Kerrey Act,[10] only to introduce the roles of the key players in this rulemaking and to serve as background for the discussion in Chapter 5.

Second, the study addresses only that portion of the rulemaking dealing with discounts for schools and libraries. Other decisions made in the universal service proceeding affected the general definition of universal service and its traditional recipients (i.e., low-income consumers and telephone carriers serving high-cost areas) as well a section similar to the schools and libraries provision that would provide advanced service to rural health care providers.

Outline of Chapter One

The remainder of this chapter begins by describing administrative rulemaking, discussing its importance as a government process, and presenting a summary and critique of the findings of a quantitative study of group power on rulemaking. Next, the chapter discusses the development of issue network theory and offers two alternative theories for assessing influence on rulemaking, elite theory and pluralism. It then presents two additional theories used in discussing the case, symbolic politics and mobilization of bias. The chapter next describes the telecommunications issue network as it usually exists and how it existed in this particular case. The final two sections of the chapter detail the research methodology used and a chapter summary, including an outline the remainder of the dissertation chapters.

Rulemaking and its Importance as a Government Process

Administrative rulemaking is how agencies interpret a law, how they refine legislation passed by the Congress and signed by the President. Cornelius Kerwin, an expert on administrative procedure who has written widely on the

topic, calls rulemaking the "single most important function performed by agencies of government."[11] He also asserts that rulemaking is not only ubiquitous throughout government agencies, but also very important—perhaps more important than even the legislative process.[12] This statement is arguably true for the FCC in the wake of the 1996 Act—it required the FCC to undertake a total of 80 rulemakings.[13]

However, despite the ubiquitous nature and importance of such powers, rulemaking is not a high-profile process in most cases. The public is usually not aware of individual rulemakings—believing that the lawmaking process is complete when the President signs a bill into law. Given the frequency of rulemaking by administrative agencies, it is unfortunate that the general public is not more aware of its existence.

While rulemaking has been carried out since the beginning of the country's existence, it was only formalized by the APA. The key rulemaking provisions of the APA—called "informal rulemaking" or "notice and comment rulemaking"—are contained in § 553. Briefly, these provisions require that all agencies:

- Publish a notice of its proposed rulemaking in the Federal Register;

- Give all interested parties an opportunity to submit written data, views, or arguments; and

- After consideration of the relevant material presented, publish the final rule, together with a "concise general statement" of the basis and purpose of the rule.[14]

The core criteria of § 553 rulemaking procedures can be described as "information, participation, and accountability."[15] Each of these terms has specific meaning when associated with the rulemaking process and each has been expanded significantly since 1946.

The rulemaking in this case is examined within this framework in Chapter 5 because, unless it adhered to these requirements, it would not be a "proper" rulemaking and any further analysis would be moot.

Information

Two types of information are relevant in the context of the rulemaking process: (1) information that the agency must provide to the public and (2) information that the agency must collect and consider. At the most basic level, the agency must provide information to the public that a rule is being developed and then again when it is finalized. Additionally, in accordance with § 553,

the public must be provided the opportunity to comment on an agency's proposals.

Agencies also must consider information provided in authorizing statutes, information statutes, and presidential executive orders. An authorizing statute is the mandate provided by Congress to perform the rulemaking. It will sometimes provide specific guidance as to how and what types of data will be collected.[16] Whereas authorizing statutes provide vertical, specific direction—meaning they apply to one issue from beginning to end—information statutes provide horizontal, cross-cutting guidance—meaning they apply to a specific issue across all rulemaking procedures.[17]

Third, executive orders provide the president with a device for intervention into the rulemaking process.[18] For example, President Reagan issued an executive order requiring all agencies to conduct a semiannual "federalism assessment" of rulemakings they had under development. His intention was to ensure that federal agencies were not impinging on states' rights.[19]

Participation

Public participation is the element that has been most expanded since the APA took effect. In the 1960s, the legal definition of "relevant" parties was altered to mandate public involvement. Prior to that time, only those private entities directly affected by a proposed rule or other agency action, such as adjudication, were allowed to participate.

One significant court case concerning participation is *Office of Communication of the United Church of Christ (UCC)* v. *FCC*.[20] Although that specific case involved agency adjudication rather than rulemaking, the same principle of public participation applies. The UCC had attempted to intervene in the license renewal proceedings of a television station that the UCC said did not adequately represent the public interest through its programming. In fact, the UCC believed that the station management discriminated in its programming based on race and religion. The FCC refused the attempted intervention, saying that the UCC had no greater interest in the matter than any other party and could therefore not intervene. When the FCC renewed the license (although conditionally), the UCC appealed.

The Supreme Court found that the FCC could not deny the entire listening public a voice in the license renewal process, and remanded the case for further consideration. The Court ruled that a broader definition of "standing" was needed to allow the views of the audience to be heard in license renewal proceedings. The Court stated that the audience necessarily had an interest in the station since, without it, no station could exist. It further ordered that the FCC devise some method for more public participation in the renewal process.

Accountability

Agencies are accountable to three external authorities: the Congress, the President, and the Judiciary. These three authorities regularly assess and "pass judgment" on the agencies' products. The criteria each branch uses are different. Unfortunately, this sometimes causes an agency to run afoul of one authority while trying to please another.[21] For instance, an agency such as the FCC may enact rules or impose non-regulatory guidelines of doubtful or questionable constitutionality to please Congress. For example, to please Congress, the

FCC has adopted guidelines restricting indecent broadcasting, but the courts have repeatedly found these guidelines to be unconstitutional.

Kerwin notes "two crucial aspects of this accountability network [that] deserve to be highlighted. . ." First, agencies are "expected to be responsive to multiple superior authorities, each of which wields considerable or different power over the agency." Second, there are "profound differences in the priorities and objectives of each of these authorities." The example of indecency cited above is indicative of such conflicts. The priority of Congress—to please its varied constituencies—is far different from the priority of the judiciary, which has no constituency and seeks only to ensure that laws and rules are constitutional. Further, the priorities of the regulated industry often differ (1) within that industry's subgroups and (2) from the public interest groups associated with that industry as a whole.

Interest Groups and the Rulemaking Process

Scott Furlong was one of the first political scientists to examine the influence of groups on the

rulemaking process and to develop and test a theory to assess this influence. Furlong based his theory of group power over rulemaking on William Keefe's study of group power over the legislative process.[22] Furlong hypothesized:

> The ability of an interest group to influence rulemaking is a function of its ability to participate in the bureaucratic policy making, its ability to form coalitions, whether it represents business interests, the type of policy the group wants to influence (distributive, redistributive, regulatory), the group's legitimacy, the amount of access it has to the agency, and the size of the group's membership.[23]

Furlong used survey data to examine how interest groups related to regulatory agencies, participated in rulemaking, and perceived the effectiveness of their participation. His hypothesis was composed of seven elements, discussed below.

> *Emphasis on Rulemaking.* A group's ability to influence administrative rulemaking is determined, in part, by the emphasis it places on participating in the rulemaking process. This element is composed of two variables related to the group's resources. First, financial capacity demonstrates a group's propensity to participate and subsequently to influence policy.[24] Second, professional staff dedicated to rulemaking activity also demonstrates a group's commitment to rulemaking.
>
> *Coalition Building.* Groups often form coalitions to influence rulemaking[25] and these coalitions have been shown through previous research to affect agency behavior.[26] Therefore, a group successful in forming coalitions would probably have a greater influence on rulemaking.[27]

Organizational Types. Groups representing business, whether corporations themselves or the trade associations that represent them, have greater representation than groups representing non-business interests. Such skewed representation could have a significant effect on influence.[28]

Policy Types. Different types of policy are marked by different levels of contention, therefore providing different levels of opportunity for groups to influence those policies. In general, the less contentious an issue, the more influence one group may have on rulemaking since that group will meet with little or no opposition from competing groups. The more contentious an issue, the more a rulemaking agency will have to weigh different views and develop a possible compromise position for the final rule, decreasing the influence held by a single group. Furlong used Lowi's policy categorizations for his experiment:[29]

- *Distributive* policies which provide benefits directly to a group; Distributive policies generate the least conflict of the three types and provide the most opportunity for interest groups to influence those policies.

- *Redistributive* policies which benefit one group but restrict or penalize another group. Redistributive policies generate the most conflict. These issues cut across class lines and involve taking resources from one group and giving them to another. This, theoretically, would pose the least opportunity for interest groups to influence rulemaking.

- *Regulatory* policies which put present constraints on a group with an eye toward benefiting society in a greater sense. Regulatory policies generate somewhat more conflict; therefore, one would expect less interest group influence in these areas.

Group Legitimacy. The legitimacy of a group will affect its ability to influence policy.[30] This legitimacy serves as "a measure of credibility and knowledge of the political arena and policy."[31]

Access. If access is unequal, influence may likely be unequal as well. If policy makers use information from interest groups in developing a rule - as they are required to do by law - then differentials in access may very well affect the amount of influence a group has in a given rulemaking. A policy maker who hears from only one side or who hears much more from one side than the other is likely to be persuaded by the arguments and information to which he or she is exposed.[32]

Organizational Size. The size of an organization's membership may well affect influence[33] since a large membership may provide considerable financial resources and some degree of legitimacy to the organization; although, a large membership may prove difficult to mobilize.[34]

Discussion

Furlong's study applied survey data collected from interest groups to examine how those groups relate to regulatory agencies, participate in rulemaking, and perceive the effectiveness of their participation. The study is helpful in identifying group characteristics that may affect influence on the rulemaking process, but it does suffer from two limitations.

First, Furlong used *self-reported, perceived* effectiveness of a group's lobbying efforts as a proxy for *objectively assessed, actual* effectiveness—if the group said its efforts were successful, he considered it successful. A better method of assessing actual

influence, Furlong states in his conclusions, would be to compare the content of proposed rules to the content of the final rules. In that way, a researcher might better assess actual influence.

Second, Furlong's variables, as operationalized, were flawed in some cases. One instance was using group age as a proxy for group legitimacy. Furlong hypothesized that the older the interest group, the higher its legitimacy in the eyes of the policy makers and subsequently the more influence it should have on rulemaking.[35] According to Furlong, older groups have had more time to gather information, make contacts, understand the governmental process, and "learn the ropes" of policy making. He believes that older groups will be seen as more legitimate in the eyes of both policymakers and in the eyes of any group membership, should one exist.

Furlong's definition is logical, in general, but does not take into account the political environment in which a particular rulemaking is being conducted. Specifically, a new group advocating a politically popular position might be expected to have more legitimacy in the rulemaking process than an older, established group advocating a less popular position.

Furlong also chose to operationalize the policy type variable in a way that may have skewed his results. As he says himself, "the concept of policy type may be unrealistically simplistic" because one agency may implement more than just one of the policy types described above.

These limitations may have been responsible for Furlong's finding that in the case of formal methods, such as providing comments in administrative proceeding, only the ability to form coalitions and the level of access were perceived as significant. In the case of informal methods, such as contact with agency personnel prior to the beginning of a rulemaking proceeding, only organizational type[36] and the level of access were perceived as significant.

In spite of the limitations, however, Furlong's study provides insight into the types of issues that a researcher should examine in assessing influence on the rulemaking process. These seven factors will be discussed in Chapter Five as they relate to the rulemaking proceeding that is the subject of this research. Such an examination will be useful in determining whether this rulemaking conformed to previously findings about the administrative process.

Theoretical Frameworks for Examining Political Influence on the Rulemaking Process

This section introduces three possible theories for examining political influence on the rulemaking process: issue network theory, pluralism, and elite theory. Each is discussed below, as is the rationale for selecting issue network theory as the theoretical framework for this dissertation.

Issue Network Theory

As stated earlier, this dissertation seeks to assess the political influence of various interest groups and individuals on the FCC's universal service rulemaking dealing with schools and libraries. James Madison was perhaps the first person to develop a theory about interest group influence on the government. In his Federalist Papers 10 and 51, Madison presents what are arguably the "best-known passages in America's constitutional debate."[37] Further, Madison captured what remains America's ambivalence towards groups:

> Groups are inevitably selfish, narrow, and bad . . .but they are also a part of man's nature, and should by no means be forcibly eradicated or made illegal.[38]

Rather than controlling groups, then, a better approach would be to understand how groups influence the policymaking process.

One enduring theoretical approach for examining U.S. policymaking has been subgovernment theory, first mentioned in 1939 by Ernest Griffith:

> A small group of actors dominate the development of policy in a given field. Policymaking is consensual, with quiet bargaining producing agreements among affected parties. Partisan politics does little to disturb these relatively autonomous and stable arrangements.[39]

Issue network theory, first introduced by Hugh Heclo in 1978,[40] grew out of subgovernment theory and has since been further developed and refined by other researchers, most notably Jeffrey Berry.[41] However, although one theory may have given rise to the other, the two differ in significant ways.

Issue networks, like subgovernments, are composed of groups and individuals representing government, industry, and public interests that share expertise on a policy area and frequently exchange information.[42] They can be described as "shared knowledge groups" or a set of organizations and/or individuals "that share expertise in a policy area and interact with each other over time as relevant issues are debated."[43] In short, issue networks

are dynamic—alliances shift rapidly, new groups enter them easily, and network boundaries are never fixed. They often change from case to case. Further, as opposed to subgovernments, issue networks are affected, oftentimes greatly, by partisan change. Issue networks also differ from subgovernments in that the former are marked by conflict while the latter are marked by mutual accommodation.[44]

Berry outlines four identifiable properties of issue networks:

> *Hollow Cores.* Networks do not have a "central lobbying group that act[s] as a broker among most of the other groups in the network" or to coordinate all the major interest group activity. This lack of central control is called "hollow core." It exists because of both ideological differences among groups as well as the presence of so many issues that no single group could possibly provide protracted leadership on them all.[45]
>
> *Multiple Niches.* Most individual groups are narrowly focused and operate within "issue niches," interacting primarily with those groups representing similar interests.[46]
>
> *The Importance of Being Expert.* Apart from the high-profile lobbyists that generate most of the news headlines about their profession, the majority of lobbyists rely on extensive knowledge of their issue area to maintain access to government policymakers. Recognition as an expert is increasingly important as issues grow more and more complex and competition from other groups that focus on the same area increases.[47]
>
> *Sloppy Boundaries.* As stated earlier, the boundaries of issue networks are constantly

> changing. A group need not be a central player in the network to be recognized as a member; it need only develop a relationship with one group already in the network. Boundaries are also loose because issue areas often overlap and no central authority exists to exclude new groups.[48]

Pluralism

Modern pluralism was preceded in political science by what was called both group theory and classic pluralism. Group theory,[49] as described by Truman[50] and Dye,[51] is equivalent to classic pluralism, as described by Garson.[52] Both mention Truman's *The Governmental Process* and Dahl's *Who Governs?*[53] as their support. This theory then developed into plural elite theory or neopluralism and, finally, grew into what is called modern pluralism. In this research, the term "pluralism" is used to refer to modern pluralism.

Pluralism holds that "through bargaining and compromise between affected groups and political elites, democratic decisions are reached, with no one '[interest] group' consistently dominating."[54] An interest group may be defined as "an organized body of individuals who share some goals and who try to influence public policy."[55] Interest groups often represent corporate interests, but one type of group, called a public interest group (PIG),

generally represents non-economic interests. These groups "seek a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization."[56] According to Garson, another proponent of the pluralist explanation of policymaking:

> American politics [can] be empirically shown to be based on a wide variety of group influences, ideas, personalities, traditions, and interests. Politics. . . is relatively free from the domination of any single group or class of interests.[57]

The tenets of pluralism can be summarized by the following five propositions. First, modern society increases social complexity. Complexity requires more government intervention in society. It also requires more cooperation among individuals, and this in turn requires the existence of many groups. Groups inevitably tend to seek government cooperation to obtain their goals. Next, public policy is a function of (a) the decision maker's institutional interests and role perceptions and (b) the effect of traditions on potential groups.

Third, group success is based on many factors, such as the number of adherents, intensity of their commitment, mastery of political techniques (e.g., lobbying and public relations), and level of resources

(e.g., legitimacy, wealth, time, and control over information). Ordinarily, wealth is not necessary for a group to acquire at least some of these prerequisites for success. Fourth, political stability depends on the counterbalancing of opposing groups, the overlapping of their memberships, consensual acceptance of the rules of the game, the incentive the system gives to accommodation and compromise, and the pluralist fragmentation of power. Finally, there is no real public interest. The social interest can be assessed only through "summing" the often-conflicting interests of organized and potential groups. In practice, the perpetuation of the system becomes the dominant value of politics.[58]

Elite Theory

Elite theory holds that there is "only one set of scales that matters"——that of a "power elite."[59] It is the "rule of the political few over the irrational many."[60] Elite theory explains policy as the result of the preferences and values of a governing elite.[61]

Elite theory comprises six propositions. First, society is divided into the few who have power and the many who do not. Only a small number of persons allocate

values for society; the masses do not participate in developing public policy. Next, the few who govern are not typical of the masses that are governed. Elites are drawn disproportionately from the upper economic strata of society. Third, the movement of nonelites to elite positions must be slow and continuous to maintain stability and avoid revolution. Only nonelites who have accepted the basic elite consensus can be admitted to governing circles.

Fourth, elites share a common view of the social system that serves to ensure its preservation. According to Dye, the bases of elite consensus in the United States are the sanctity of private property, limited government, and individual liberty. Fifth, public policy does not reflect the demands of the masses, but rather the prevailing values of the elite. Changes in public policy will be incremental rather than revolutionary. Finally, active elites are subject to relatively little direct influence from "apathetic" masses. Elites influence masses more than masses influence elites.[62]

Discussion and Critique of
Pluralism and Elite Theory

Pluralism is—or at least appears to be—prevalent in rulemaking proceedings that are truly open. In such a situation, an agency can demonstrate that it solicited and obtained input from a wide range of public players. Elite theory is—or at least appears to be—prevalent when those proceedings take place with input that may come from a variety of sources, but only the input of the elite is reflected in the ultimate policy output.

Elite theory states that elites always have more power than the masses and that all decisions reflect their desires. Elite theory also holds that elites do not always act against the "public interest." In fact, it allows that elites often work to promote the public interest rather than their own financial or political interests. Elite theory, then, covers a lot of ground, making allowances to fit many situations.

Proponents of pluralism also apply that theory broadly to suit a range of issues and outcomes. By focusing on the "big picture" rather than individual cases, pluralists claim that a decision that is seemingly counter to their theory is simply a single case of one interest "winning"—another interest could just as easily

have won and may well "win" in the next proceeding. Again, similar to elite theory, pluralism can be stretched to suit many policy circumstances.

One method of testing the theories is to investigate whether a rule was developed from the "top down" or "bottom up." The first is an indication of elite influence; the second, of pluralism. This issue is particularly important in "public interest" matters that appear to benefit "the masses" because such decisions are likely to be seen as being the result of pluralism. This is not always the case, as elites do not necessarily act in a purely self-serving manner. Ultimately, however, elite decisions benefit the elite *as well as* the masses, but the effect on the masses is secondary in importance to the primary goal of the elite. This benefit to the elite may not be readily apparent, but it will exist. For example, a decision to increase funding for technical training may benefit underprivileged children in the inner city, but it will also benefit corporations by providing them a better-trained workforce. This means they will have to spend less money on on-the-job training. Such an interpretation may be seen as either cynical or simply as fact depending upon one's world view.

Another important point is that "elite" is not just another term for "business." Government representatives as well as public interest group leaders may also belong to the elite. For example, Reed Hundt, the former chair of the FCC, was a high school friend of Vice President Gore and a college roommate of President Clinton at Yale. He also attended Yale Law School. Although he was a government bureaucrat, he is most definitely a member of the political elite.

Selection of Issue Network Theory for this Study

When the only question asked is whether a rulemaking process favors elite or plural preference, much of the subtlety of the distinction is lost. In such a dichotomy, if rulemaking favors any single group, it is evidence in support of elite theory; if it favors no one, it supports pluralist theory. However, a third option is also available that is not often promoted by supporters of one theory or the other: that neither pluralism nor elite theory can sufficiently explain government decision making.

First, testing the validity of either pluralism or elite theory in a single case is difficult because such

an assessment does not consider other related proceedings against which to judge influence. Some theorists would argue that it is impossible to make such an assessment because each theory applies to a larger arena than a single rulemaking or even a single agency. The analyst may select any case, but must remain aware of how that case fits into the larger picture of government activity.

Second, all the information needed to determine plural versus elite influence might not be available in a single case. Issue network theory offers the opportunity to assess group influence by drawing on both pluralism and elite theory. Both often provide insights into a process and it is not necessary to rely on one to the exclusion of the other.

It is this very uncertainty that lends support to the use of issue network theory, not only in this case, but also in others similar to it.

Influence Within the Issue Network: Symbolic Politics and Mobilization of Bias

Symbolic politics and mobilization of bias are two theories used to assess the causes and impact of political behavior. Both theories are used in Chapter 5 to explain how proponents of the E-Rate not only

succeeded in implementing a generous subsidy program for schools and libraries, but also protecting the program from a concerted attack by opponents.

The theory of symbolic politics was developed by Murray Edelman.[63] It is perhaps best explained through the example of the Communications Decency Act (CDA), which criminalized indecent content on the Internet. This provision was passed as part of the 1996 Act, the same legislation that included the Snowe-Rockefeller Amendment.

Some members of Congress, many of whom are lawyers with years of experience in the legislative process, may have suspected this portion of the Act would not pass constitutional review, but Congress passed the law to show that members were "doing something" to protect children.[64] "Worthy" goals such as protecting children from "immoral" influences and promoting educational opportunity—as will be discussed later in the context of the E-Rate—are difficult to oppose. Therefore, those who constructed the CDA debate in terms of protecting children may have swayed other members who were not as legally or technology savvy. In short, it is very important to politicians and interest groups to be in the

position to frame the debate by defining the symbols used in the debate.

The concept of the mobilization of bias was developed out of the work of E.E. Schattschneider in *The Semi-Sovereign People*.[65] The core of this theory is that political organization is the "mobilization of bias" to organize some issues into public debate and organize other issue out of that debate.[66] Put differently, there is a latent or inherent bias in the status quo. When that status quo is threatened, say by new regulations, groups will mobilize to protect their interest in the status quo. Generally, this bias supports the efforts of industry, but under the right circumstances bias can also be generated against the status quo and in favor of change. In this case, issue champions in government and the public interest community were successful in mobilizing bias in favor of change.

In successfully framing an argument, both through defining the symbols used and mobilizing bias in its favor, one faction of an issue network—usually business interests in cases dealing with the FCC—has won the advantage in the conflict at hand. This case, however, was different. Industry never had the upper hand in the debate. In assessing the issue of political influence in

this case, therefore, one must also consider why this case was different from so many others.

The Telecommunications Issue Network—Overview

In the instance of the schools and libraries portion of the universal service rulemaking, the telecommunications issue network was significantly different than usual. Specifically, public interest groups often comment on FCC proceedings, but a greater *diversity* and *number* of public interest groups participated in this particular proceeding. To that point, simultaneous to this rulemaking, two others were also underway: one concerned access charge reform; the other, interconnection. The access charge proceeding reformed the FCC's system of interstate access charges to make that system compatible with the pro-competitive and deregulatory framework established by the Telecommunications Act of 1996.[67] The local competition order removed statutory, regulatory, and operational barriers to local telephone competition by establishing a framework of minimum, national rules that would enable the states and the FCC to begin implementing the local competition provisions of the Telecommunications Act of

1996.[68] These three proceedings were collectively referred to as the "competition trilogy," because together they would establish a new model under which competition in the telephone industry would take place.

The issue network for most of the competition trilogy (i.e., the other portions of the universal service proceeding and the interconnection and access charge proceedings) was composed of the usual members of the telecommunications issue network—the telecommunications industry and the government organizations and individuals charged with implementing telecommunications policy.[69] The issue network for the schools and libraries portion of the universal service rulemaking, however, was significantly different than usual. For example, public interest groups often comment on FCC proceedings, but a greater diversity of types—as well as a greater number of these groups—participated in this proceeding.

In examining the names of commenting parties for the other two proceedings in the competition trilogy, it is clear that public interest groups played a higher-profile role than usual in the schools and libraries universal service rulemaking. Further, the *types* of public interest groups were different. Whereas consumer groups

and telecommunications-specific groups, such as the Consumers Union and the Benton Foundation, comment on a wide range of FCC issues, this proceeding also brought the influence of educational and library groups to bear. In fact, these new participants outnumbered the traditional participants 3-to-1.

Government

The primary government members of the issue network were:

- The White House, especially Vice President Gore.
- The official telecommunications policy advising body to the President, the National Telecommunications and Information Administration (NTIA) (part of the Department of Commerce), the NTIA Administrator and the NTIA staff.
- The Information Infrastructure Task Force (IITF) and the IITF's private-sector counterpart, the National Information Infrastructure (NII) Advisory Council.
- The House and Senate, especially those individuals assigned to the subcommittees with jurisdiction over telecommunications issues.
- The FCC, the independent administrative agency responsible for defining, implementing, and enforcing national telecommunications policy.
- Additionally, in this case, the Department of Education played a major role in the issue network.

The FCC, as the administrative agency charged by law with regulating the telecommunications industry, is one of the most prominent members of the issue network. It is primarily a target for lobbying efforts by other groups, but is also a source of policy information and influence in and of itself.

Each of the issue network "sectors" were very active during the schools and libraries portion of the universal service rulemaking. They were also active, to varying degrees, during the time leading up to the introduction of what was to become the 1996 Act and its Snowe-Rockefeller provision.

State governments also played a role, commenting on the FCC's Notice of Proposed Rulemaking on this issue. Usually, only state public service commissions comment in FCC proceedings. However, in the schools and libraries proceeding, both state departments of education and public service commissions submitted comments, and these two groups often had different opinions on the services that should be made available to schools and libraries. During the time leading up to the signing of the 1996 Act, state governments kept mostly to themselves,

developing their own legislation and programs when they saw fit.

Industry

Not surprisingly, the telecommunications industry also plays a major role in the network; however, this does not imply that industry speaks with a single voice, in general, or in the case of the schools and libraries proceeding. Each sector of the industry has its own agenda. Sometimes these agendas overlap, but more often the various sectors are at odds with each other. The following telecommunications industry sectors are represented in the issue network:

- The long distance telecommunications industry, such as AT&T, MCI Worldcom (formerly two companies, MCI and Worldcom), and Sprint.

- The Incumbent Local Exchange Carriers (ILECs). For example, the Regional Bell Operating Companies (RBOCs or "Baby Bells"), GTE, and many small to mid-size companies. The RBOCs at the time of the proceeding were Bell Atlantic, NYNEX (which recently merged with Bell Atlantic), BellSouth, Ameritech, Pacific Bell, SBC Communications (which recently purchased Pacific Bell, SNET and Ameritech), and US West.

- Competitive Local Exchange Carriers (CLECs), such as MFS and the former Teleport Communications Group (TCG) (now part of AT&T) that compete in the local telephone market, mostly for business customers, against the traditional RBOCs.

- Cable Television Providers.

- Computer hardware and software producers, such as IBM, Microsoft, Netscape, and Apple. This sector also encompasses a broad range of views and its members, like the various telephone company sectors, do not always agree on every issue. They are grouped together here because they generally are of similar mind when they deal with telecommunications issues.

- Information services providers are composed of two groups, companies that provide only access to the Internet and other companies that provide proprietary content as their primary business and also Internet access (e.g., America Online and Microsoft).

Public Interest Groups

A number of public interest groups regularly participate in FCC proceedings and telecommunications policymaking, in general. For example, the Alliance for Public Technology, the Benton Foundation, the Center for Media Education, and Computer Professionals for Social Responsibility all have well-established telecommunications policy programs and institutional expertise in that area.

Since this proceeding would also affect the telecommunications services available to schools and libraries, groups representing the interests of those institutions also took part in the proceeding. For

example, groups such as the National Association of School Boards, National Education Association, Council of Great City Schools, American Library Association, and Urban League, all submitted comments. Further, to better leverage their influence during the rulemaking, some groups formed consortia, such as the Education and Library Networks Coalition (EdLiNC).[70] This was especially true for groups that did not usually participate in FCC proceedings.

Summary

This section has provided a broad overview of the telecommunications issue network. Chapter Two will discuss in much greater detail the major players in the issue network, their actions during the years leading up to the signing of the Telecommunications Act of 1996, and the development of the issue environment as it came to exist for the schools and libraries proceeding.

Methodology

This study relied on primary source data and policy research and analysis. Primary research materials

included government documents, including executive branch documents outlining the vision of the NII initiative, such as the Agenda for Action;[71] Congressional reports and the Telecommunications Act of 1996; and FCC rulemaking notices and the comments filed by the members of the issue network. Commentary and speeches from officials of these three organizations were also used. Primary non-governmental policy and legal data was gathered from the participants' and issue network members' web sites. Examples include policy position papers, comments in the FCC's rulemaking proceeding, reports, and speeches by the long distance and local telephone companies and public interest groups.

A supplementary tool for gathering primary source data was the use of interviews with key informants.[72] A key informant is an individual who possesses special knowledge, status, or skills, who is willing to share his or her knowledge and skills with the researcher and who has access to perspectives or observations denied the researcher.[73] The primary purpose of the interviews was to provide background and context for the historical and legal documents analyzed. In a few cases they provided unique information unavailable elsewhere.

An initial set of key informants was selected from groups submitting comments, reply comments, or further comments in the proceeding itself. Some key informants were also selected even though they had not directly participated in the rulemaking proceeding; these participants were selected based on their participation in the legislative process and/or their overall expertise in the universal service or overall telecommunications policy area.

Additional key informants were selected using the "snowball method":[74] Each interviewee was asked to recommend others with relevant knowledge at the end of their interview. The author also requested that the informant provide the titles of any documents he or she believed to be important to understanding the universal service rulemaking or the telecommunications issue network. A list of key informants is included in Appendix A.

The research questions were discussed with the key informants in unstructured—also called in-depth—interviews. These types of interviews move beyond the typical interview scenario of an investigator asking a pre-determined set of questions and a subject providing narrowly tailored questions. Instead, they are more

accurately described as "conversation[s] with a purpose"[75] and they are often used when questioning key informants. In fact, in unstructured interviews, the "respondent occasionally assum[es] the questioner's role."[76] Further, interviewers

> begin with the assumption that they do not know in advance what all the necessary questions are. Consequently, they cannot predetermine fully a list of questions to ask. They also assume that not all subjects will necessarily find equal meaning in like-worded questions—in short, that subjects may possess different vocabularies.[77]

The interviews employed for this study are classified as "unstructured," but they did, in fact, have some structure. A set of questions was developed and each general topic was addressed in each interview (see Appendix B); however, the unstructured interview method allowed for digression regarding specific questions when appropriate to probe previously unknown issues and/or circumstances. The "detailed questions" discussed during these interviews were used to investigate more deeply the research questions outlined in the previous section. As appropriate, the detailed questions were also considered while reviewing relevant research documents and were asked in various ways of the interview participants; however, not all questions were asked of all informants

nor were they necessarily considered in reviewing each document.

Chapter Summary

This chapter has introduced the history and background of the universal service issue and provided an overview of the universal service rules for schools and libraries that were issued by the FCC in 1997. It has described the process of administrative rulemaking, discussing its importance as a government process, and presented the findings of Furlong's study of group power over rulemaking, including a discussion of how this study is applicable to the current study.

Next, Chapter 1 discussed the development of issue network theory, critiqued two alternative theories for assessing influence on rulemaking, pluralism and elite theory, and provided a description of two theories that can be used to further describe the events that took place in this case. The chapter also described the telecommunications issue network as it usually exists and how it existed in this particular case.

Chapter 2 provides a chronology of events beginning with the arrival of the Clinton administration in 1993

and ending with the signing of the 1996 Act. Even before being elected president, Clinton actively promoted the concept of the NII. Vice President Gore was a long-time advocate of technology policies, and his interest in furthering his policymaking role was apparent. This chapter describes the political environment leading up to introduction of the Snowe-Rockefeller Amendment during the first two years of the Clinton administration, and a legislative history of the amendment.

Chapter 3 describes the portion of the FCC's universal service rulemaking dealing with schools and libraries, including the establishment of the Federal-State Joint Board on Universal Service and the development of the Joint Board's recommendations to the FCC.[78] The chapter also details the FCC's final rules on universal service for schools and libraries.

Chapter 4 covers the timeframe May 1997 to Auggust 1999 and is intended as a "postscript" to the events described in Chapters Two and Three. Although not a part of the rulemaking proceeding, the events that occurred during this timeframe provide additional insight into the political influence on the rulemaking process.

Finally, Chapter 5 presents analysis and conclusions based on the previous three chapters' data and concludes by offering possible directions for future research.

Notes

[1] 1996 Act, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 et seq. All citations of the 1996 Act are to the relevant sections of the United States Code unless otherwise noted.

[2] 47 U.S.C. § 254.

[3] Universal service goals are accomplished by providing subsidies to local telephone companies providing service to

1. High-Cost Areas. A high-cost area is one in which the cost of providing service is at least 115% of the national average. 47 C.F.R. § 36. *See also* Amendment of Part 69 of the Commission's *Rules Relating to the Assessment of Charges for the Universal Service Fund and Lifeline Assistance*, Memorandum Opinion and Order, 4 FCC Rcd 6134 (1989).

2. Low-Income Customers. 47 C.F.R. §§ 36.701-36.741, 69.104(j)-(l), 69.116, 69.117, 69.203(f)-(g). *See also* Amendment of Part 69 of the Commission's *Rules Relating to the Assessment of Charges for the Universal Service Fund and Lifeline Assistance*, Memorandum Opinion and Order, 4 FCC Rcd 6134 (1989).

[4] 47 U.S.C. § 151 et seq. (1988).

[5] Federal Communications Commission, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, 96-93, CC Docket No. 96-45 (March 8, 1996); Federal Communications Commission, *Common Carrier Bureau Seeks Comment On Universal Service Recommended Decision*, 96-93, CC Docket No. 96-45 (November 18, 1996). The administrative rulemaking process is described in detail later in this chapter.

[6] Federal Communications Commission, *Report and Order on Universal Service*, 96-93, CC Docket No. 96-45 (adopted May 7, 1997; released May 8, 1997).

[7] Mark Esherick, MCI, interviewed by author, 22 October 1997, Washington, DC, tape recording. Robert Blau, BellSouth, interviewed by author, 31 October 1997, Washington, tape recording.

[8] Greg Rhode, Office of Senator Byron Dorgan (D-ND), interviewed by author, 31 October 1997, Washington, DC, tape recording.

[9] James Casserly, Senior Legal Advisor to FCC Commissioner Susan Ness, interviewed by author, 22 October 1997, Washington, DC, tape recording.

[10] The Snowe-Rockefeller-Exon-Kerrey Act ("Snowe-Rockefeller Act") was the legislative mandate for the FCC's universal service rules for schools and libraries.

[11] Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy* (Washington, DC: CQ Press, 1994), xi.

[12] Kerwin, *Rulemaking*, 1-2.

[13] Federal Communications Commission, *1996 Annual Report* (1996).

[13] Rulemaking is a quasi-legislative process because when an agency conducts a rulemaking it is acting as a mini-legislature. Agency rulemaking may be contrasted with agency adjudication, which is a "quasi-judicial" or retroactive process.

[14] James W. Fessler and Donald F. Kettl, *The Politics of the Administrative Process* (Chatham, NJ: Chatham House Publishers, 1991), 301.

[15] Kerwin, *Rulemaking*, 52.

[16] Information statutes are best exemplified by the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), and the Paperwork Reduction Act (PRA).

[17] Ibid., 62.

[18] Ibid., 61.

[19] Ibid., 62.

[20] 359 F. 2d 994 (D.C. Cir. 1966).

[21] Kerwin, *Rulemaking*, 71.

[22] Scott R. Furlong, "Interest Group Influence on Rulemaking," *Administration & Society*, 29 (July 1997): 325-347. For further information about Keefe's work on the influence of groups on the legislative process, *see* William Keefe, *Congress and the American People*, 3d ed. (Englewood Cliffs, NJ: Prentice Hall, 1988).

[23] Furlong, "Influence on Rulemaking," 330.

[24] Furlong, "Influence on Rulemaking," 327, citing K.L. Schlozman and J.T. Tierney, *Organized Interests and American Democracy* (New York: Harper Row, 1986), *Organized Interests* and D. Knoke, *Organizing for Collective Action*, 3d ed. (Englewood Cliffs, NJ: Prentice Hall, 1990).

[25] Furlong, "Influence on Rulemaking," 328, citing Schlozman and Tierney, *Organized Interests*, and D. Knoke, *Organizing for Collective Action*, 3d ed. (Englewood Cliffs, NJ: Prentice Hall, 1990).

[26] Furlong, "Influence on Rulemaking," 328, citing Jeffrey Berry, "Subgovernments, Issue Networks, and Political Conflict," in *Remaking American Politics*, eds. R. Harris and S. Milkis (Boulder, CO: Westview, 1989), 239-260; Keefe, *Congress and the American People*; R. Salisbury et al., "Who Works with Whom? Interest Group Alliances and Opposition," *American Political Science Review* 81 (1987): 1217-1234; and, James Q. Wilson, "Congress and Organized Interests," in *Congressional Politics*, ed. C. Deering (Chicago, IL: Dorsey, 1973).

[27] Furlong, "Influence on Rulemaking," 328.

[28] Furlong points to research on capture theory and the iron triangle literature to support further the power of

industry in the rulemaking process. "Capture theory" asserts that an agency is controlled by the very industry that agency regulates. An "iron triangle" is a small group of legislators, bureaucrats (i.e., agency personnel), and lobbyists that develop policy on a particular area through mutual consensus. Furlong, "Influence on Rulemaking," 328. For additional information about capture theory *see* S. Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* 19 (1976): 211-240; G. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2 (1971): 3. For additional information on iron triangles, *see* A.L. Fritsehler, *Smoking and Politics*, 4 ed. (Englewood Cliffs, NJ: Prentice Hall, 1989) and Jeffrey M. Berry, *The Interest Group Society*, 2d ed. (Boston, MA: Scott, Foresman, and Company, 1989), 164-195.

[29] Furlong, "Influence on Rulemaking," 328-329, citing Theodore Lowi, "American Business, Public Policy, Case Studies, and Political Theory," in *World Politics* 16 (1964): 677-715.

[30] Furlong, "Influence on Rulemaking," 329, citing Keefe, *Congress* (no page number cited).

[31] Ibid., 329.

[32] Ibid., citing Schlozman and Tierney, *Organized Interests*, 165.

[33] Furlong, "Influence on Rulemaking," 330, citing Keefe, *Congress*, and Schlozman and Tierney, *Organized Interests*.

[34] Furlong, "Influence on Rulemaking," 330, citing Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965).

[35] Furlong, "Influence on Rulemaking," 329.

[36] Businesses perceived this type of contact as more significant than contact with union groups.

[37] Norman J. Orenstein and Shirley Elder, *Interest Groups, Lobbying, and Policymaking* (Washington, DC: CQ Press, 1978), 8–10.

[38] Ibid., 10.

[39] Ernest Griffith, *Impasse of Democracy* (New York, NY: Harrison-Hilton Books, 1939). *See also*, Jeffrey M. Berry, *The Interest Group Society*, 3d ed. (Boston, MA: Scott, Foresman, 1996), 194-195.

[40] Hugh Heclo, *Issue Networks and the Executive Establishment* (Washington, DC: American Enterprise Institute, 1978).

[41] See Berry, *Interest Group Society*, 3d ed., and Jeffrey M. Berry, "The Dynamic Qualities of Issue Networks," delivered at the 1994 Annual Meeting of the American Political Science Association, September 1-4, 1994, New York.

[42] Berry, *Interest Group Society*, 3d ed., 196–199.

[43] Ibid.

[44] Ibid. *See also*, John P. Heinz et al., *The Hollow Core* (Cambridge, MA: Harvard University Press, 1993), 275-308.

[45] Berry, *Interest Group Society*, 3d ed., 204.

[46] Berry, *Interest Group Society*, 3d ed., 204-205, citing William P. Browne, "Organized Interests and Their Issue Niches: A Search for Pluralism in a Policy Domain," *Journal of Politics* 52 (May 1990): 477-509.

[47] Berry, *Interest Group Society*, 3d ed., 205.

[48] Ibid., 205.

[49] Berry, *Interest Group Society*, 2d ed., 8-12.

[50] David B. Truman, *The Governmental Process*, 2d ed. (New York: Knopf, 1971).

[51] Thomas R. Dye, *Understanding Public Policy* (Englewood Cliffs, NJ: Prentice-Hall, 1972).

[52] G. David Garson, *Power and Politics in the United States* (Lexington, MA: Heath, 1977).

[53] Robert A. Dahl, *Who Governs?*, 2d. ed. (New Haven, CT: Yale University Press, 1961).

[54] Berry, *Interest Group Society*, 2d ed., 9.

[55] Ibid., 4.

[56] Ibid., 30.

[57] Garson, *Power and Politics*, 48.

[58] Ibid., 48-49.

[59] Lawrence C. Petracca, ed., *The Politics of Interests: Interest Groups Transformed* (Boulder, CO: Westview, 1992), 59.

[60] Garson, *Power and Politics*, 38.

[61] Dye, *Understanding Public Policy*, 20.

[62] Ibid.

[63] Murray Edelman, *The Symbolic Uses of Politics* (Chicago, IL: University of Illinois Press, 1960).

[64] For a thorough discussion of the legislative history of the Communications Decency Act, see Kimberly Dalianis, "Regulatory Redux: The Legislative History of the Communications Decency Act," unpublished paper, Broadcast Education Association Conference, Spring 1998, Las Vegas, NV.

[65] E.E. Schattschneider, *The Semi-Sovereign People: A Realists View of Democracy in America* (New York: Holt, Rinehart, and Winston, 1960).

[66] Ibid., 71.

[67] For additional information on the access charge proceeding, see Federal Communications Commission, CC Docket No. 96-262, *Access Charge Reform*; CC Docket No. 94-1, *Price Cap Performance Review for Local Exchange Carriers*; CC Docket No. 91-213, *Transport Rate Structure*;

and CC Docket No. 96-263, *Internet Access & Information Service Provider NOI*.

[68] For additional information on the local competition proceeding, *see* Federal Communications Commission, *Local Competition*, CC Docket No. 96-98. *See also* Federal Communications Commission, *Number Portability Implementation Issues*, CC Docket No. 95-116 and *Shared Transport Issues*, CC Docket No. 95-185.

[69] As might be expected, groups associated with the health care industry participated in the portion of the rulemaking affecting rural health care providers. The traditional telecommunications issue network was expanded in a manner similar to the schools and libraries portion of the rulemaking.

[70] The list of members is constantly changing. As of May 6, 1997, the members of the Coalition were Alliance for Community Media, American Association for Adult and Continuing Education, American Association of Educational Service Agencies, American Association of School Administrators, American Library Association, American Psychological Association, Association for Education Communications and Technology, Association for Supervision and Curriculum Development, Association for the Advancement of Computing in Education, Center for Media Education, Consortium for School Networking, Council for American Private Education, Council for Educational Development and Research, Council of Chief State School Officers, Education Legislative Services, Inc., Educational Testing Service, Federation of Behavioral Psychological and Cognitive Sciences, Global Village Schools Institute, International Society for Telecommunications in Education, Lutheran Church - Missouri Synod, International Telecomputing Consortium, National Association of Counties, National Association of Elementary School Principals, National Association of Independent Schools, National Association of Secondary School Principals, National Association of State Boards of Education, National Association of Student Financial Aid Administrators, National Catholic Educational Association, National Education Association, National Grange, National Rural Education Association, National Rural Electric Cooperative Association, National School Boards Association, Organizations Concerned about Rural

Education, People for the American Way Action Fund, United States Catholic Conference, United States Distance Learning Association.

[71] The Clinton Administration defines the National Information Infrastructure (NII) as "a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips." Information Infrastructure Task Force (IITF), *The National Information Infrastructure: Agenda for Action*, September 15, 1993; available from the National Institute for Standards and technology's NII Virtual Library at http://metalab.unc.edu/nii/NII-Executive-Summary.html; accessed 16 September 1999.

[72] Benjamin F. Crabtree and William J. Miller, *Doing Qualitative Research* (Newbury Park, CA: Sage, 1992), 16, 35-36, 70-89; and Catherine Marshall and Gretchen B. Rossman, *Designing Qualitative Research* (Newbury Park, CA: Sage, 1989), 94-95.

[73] Crabtree and Miller, *Doing Qualitative Research*, 75.

[74] Ibid., 40.

[75] Marshall and Rossman, *Designing Qualitative Research*, 94, citing R. Kahn and C. Cannell, *The Dynamics of Interviewing* (New York: Wiley, 1957).

[76] Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 2d ed. (Boston: Allyn and Bacon, 1998).

[77] Ibid.

[78] The Joint Board carried out the work of the FCC in the first stage of the rulemaking process. The Joint Board then submitted its recommendations to the FCC for its review and implementation.

CHAPTER 2
SETTING THE STAGE:
JULY 1992 THROUGH MARCH 1996

The focus of this study is the political influence on the Federal Communications Commission (FCC) during the schools and libraries portion of the universal service rulemaking, which took place between May 1996 and May 1997. It would be difficult to assess influence, however, without first understanding the development of the universal service provisions of the Telecommunications Act of 1996 ("1996 Act") or how the issue environment that existed in March 1996 developed over the previous three and a half years. The fact is, the schools and libraries provisions were not developed by Congress in a vacuum and might not have been developed at all if it were not for all the political forces that came to bear on the telecommunications issue network between 1992 to 1996.

The time frame described in the remainder of this chapter is broken into three "phases", described below. Each phase describes the activities of representative members of the issue network leading up to the beginning

of the FCC's universal service rulemaking, specifically, the portion of the rulemaking dealing with schools and libraries.

Phase I describes the activities of the Clinton candidacy and Administration from July 1992, when Clinton named Al Gore as his running mate, through August 1993. Phase II describes the activities that took places between September 1993, when the Administration released its blueprint for a national information infrastructure (NII),[1] and December 1994. Phase III begins in January 1995 with the beginning of the 104th Congress, which developed what would become the Telecommunications Act of 1996, and ends in March 1996 with the release of the FCC's Notice of Proposed Rulemaking.

Some types of activities are specifically excluded. First, summaries of industry and public interest group philanthropic activities, such as programs promoting computers and/or telecommunications in the schools, are not considered advocacy efforts and are therefore not included. For example, the Center for Democracy and Technology and the Electronic Frontier Foundation, both prominent public interest groups, often comment in FCC proceedings; however, although they are interested in access issues, they were stronger advocates for issues

related to efforts to criminalize online indecency during the debate on the Act.

Second, government activities related to Administration infrastructure initiatives, but either unrelated or only tangentially related to the universal service issue, are excluded from this discussion of events. For example, the High-Performance Computing and Communications (HPCC) program encouraged research and investment in computing and telecommunications technologies and applications, including applications for education; however, its activities did not have any significant impact on the political issue environment surrounding the schools and libraries provisions.

In short, the intent of this chapter is to provide the reader with an overview of the issue environment leading into the FCC's rulemaking, not to supply an exhaustive list of group activities related and unrelated to the FCC rulemaking. Because of this, the groups described in each phase are generally the same, but do change slightly from phase to phase as group activity changed.

Each of the three phases begins with a description of Administration activities, followed by a description of the actions and reactions of public interest groups

and industry. Phases II and III also contain descriptions of congressional activities; Phase III also contains the legislative history of the schools and libraries provisions of the 1996 Telecommunications Act. The chapter ends with a summary of the activities of this period.

Phase I: July 1992 to August 1993

Bill Clinton signaled his interest in the concept of an NII and the benefits of technology and education by selecting Tennessee Senator Albert Gore as his running mate on July 9, 1992. Gore had long advocated supporting telecommunications research and development and using telecommunications to improve education. He is often credited with popularizing the term "NII"[2] and first suggested the concept of a "national data superhighway" in the initial draft of the High Performance Computing Act (HPCA) of 1991.[3] Gore remains arguably the most visible government advocate for the NII. Indeed, Clinton could not have selected a better running mate to signal his strong commitment to updating the Nation's telecommunications policy.

Shortly after they took office, President Clinton and Vice President Gore unveiled their technology policy statement, *Technology for America's Growth: A New Direction to Build Economic Strength*.[4] This document laid out the Administration's three overarching technology-related goals:

- Long-term economic growth that creates jobs and protects the environment
- Making government more efficient and more responsive
- World leadership in basic science, mathematics, and engineering.

The first of these goals had two elements relating specifically to information technology and/or telecommunications: (1) education and training; and (2) "information superhighways." Both of these elements contained a commitment on the part of the administration to advocate technology-related education and training and encourage telecommunications and information technology deployment.

Technology for America's Growth also contained seven new initiatives aimed at increasing the Nation's economic strength. One of those initiatives, "Invest in a National Information Infrastructure," called for five actions by the Government, including mandates to

- Create an Information Infrastructure Task Force (IITF)

- Provide funding for networking pilot projects through the National Telecommunications and Information Administration (NTIA).

The NTIA, "an agency of the U.S. Department of Commerce, is the Executive Branch's principal voice on domestic and international telecommunications and information technology issues."[5]

Concerning the first mandate, Clinton charged the IITF[6] with articulating and implementing the Administration's vision for the NII; he appointed the Secretary of Commerce, Ron Brown, as chair. The members of the IITF were "high-level representatives of the Federal agencies that play a major role in the development and application of information and telecommunications technologies."[7]

The IITF established three committees to perform its work, the Information Policy Committee, the Committee on Applications and Technology, and the Telecommunications Policy Committee (TPC). The TPC, in turn, established a Universal Service Working Group (USWG) to address NII-related universal service issues. Mr. Larry Irving, NTIA Administrator, was assigned to chair both the TPC and the USWG.[8] Additionally, because the Secretary of Commerce

was the IITF Chair, Mr. Irving, as the NTIA Administrator, assumed much of the day-to-day management of the IITF, in general.

Concerning the second mandate, to provide funding for networking pilot projects, the NTIA established the Telecommunications and Information Infrastructure Assistance Program (TIIAP)[9] to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. Specifically, the program provides matching grants to non-profit organizations such as schools, libraries, hospitals, public safety entities, and state and local governments. TIIAP grants are used to purchase equipment for connection to networks, including computers, network routers, and telephones; to buy software; to train staff and users; to purchase communications services, such as Internet access; to evaluate the projects; and to disseminate the project's findings.[10]

Public Interest Group Activity

Technologically-oriented public interest groups as well as some education and library groups,[11] took early notice of the Clinton Administration's NII initiative.

The Alliance for Public Technology (APT), the American Library Association (ALA), Computer Professionals for Social Responsibility (CPSR), and the National Education Association (NEA) were particularly active during Phase I.

The Alliance for Public Technology (APT), a nonprofit consumer advocacy group founded in 1988, was an early advocate of "advanced universal service":

> To make available as far as possible, to all people of the United States, regardless of race, color, national origin, income, residence in rural or urban area, or disability, high capacity two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video and other types of telecommunications services.[12]

In 1993, it published two reports, *Principles to Implement the Goal of Advanced Universal Service: Connecting Each to All* and *Connecting Each to All: A Telecommunications Platform for the Information Age.*

Principles outlined APT's definition of advanced universal service and eight principles for achieving that goal. The document did not call only for Internet connections to schools and libraries, but went further and called for the deployment of high-bandwidth services (the Internet itself had not yet become a ubiquitous term) to the home itself. APT did recognize the benefits

of technology for education saying that society would benefit as more people gained access to advanced technology for "lifelong learning and parent/school involvement in programs such as home work assistance, help with English as a second language. . .."[13] Additionally, APT held out the hope that as the applications of new telecommunications technologies were developed, more people would be included in the budgets of schools and libraries.[14]

Connecting Each to All, the companion piece to *Principles*, updated and expanded a previous APT report, *An Information Age Agenda: The Telecommunications Services Platform*, published in 1990. *Connecting Each to All* provided APT's "vision" of advanced universal service, including scenarios describing how families might have dealt with common problems at the time and how they might deal with them differently and more effectively with the help of advanced technology. Like *Principles*, *Connecting Each to All* said homes needed to be connected to the new broadband network, but it also said that schools should be connected.[15]

The American Library Association had long followed library-related policy issues in Washington. It had published a newsletter for members on pertinent topics

since 1981 and in July 1992 began publishing what would become a very widely-read, online newsletter, the *ALA Washington Office Newsline (ALAWON)*. The first issue, in fact (August 1992), included a review of a recent hearing in the Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications on the role of telecommunications technology in the classroom. [16]

The following issue reported on Senator Gore's introduction of the Information Infrastructure and Technology Act of 1992, intended to promote applications for the National Research and Education Network (NREN), and his comments on the Senate floor:

> For example, it will fund development of new ways to use high-speed networks to link [schools together] so that teachers and students can communicate with their colleagues around the country [and] access digital libraries of information. . . It will accelerate development of [the information infrastructure] so that even the most remote library can tap into more information than is stored in the entire Library of Congress.[17]

Although ALA provided a significant informational role during this phase, it also led two important advocacy events. The first, held in January 1993, was the ALA Committee on Legislation's Winter Meeting. At that event, three out of five of the sessions focused on

increasing access to telecommunications and the Internet in libraries throughout the country.

The second, in April 1993, was the ALA "Library Legislative Day," an annual event held on Capitol Hill in which ALA members meet with legislators on issues of concern to them. At the 1993 event, approximately 600 library advocates came from across the country to meet with their Senators and Representatives. One of their top issues was national information policy and access issues.

The Association also promoted library-friendly technology policies:

- Provided input to a White House Office of Science and Technology Policy report on the National Research and Education Network[18] and provided continuing updates on the status of NREN-related legislation and initiatives

- Provided ongoing updates on the status of telecommunications legislation and how it could benefit or otherwise affect libraries[19]

- Conducted for its members seminars on Internet access for libraries and rural telecommunications programs in which libraries could participate[20]
- Sponsored the April 1993 National Net meeting[21] with the theme "Extending the Benefits," with sessions focusing on broadening the constituencies of the National Research and Education Network to include libraries, schools, and communities

- Made policy recommendations for the Administration's first year in *First Steps for a*

First Year: Recommendations for the Clinton Administration in Library and Information Policy[22]

- Wrote a background paper, *The Essential Federal Role in Support of Libraries*[23]

- Reported to its constituents on the Administration's Telecommunications and Information Infrastructure Assistance Program (TIIAP).[24]

Computer Professionals for Social Responsibility, founded in 1981 as a national public-interest alliance of information technology professionals and others, also provided valuable input to the discussion of universal service. It began its efforts on this specific issue at the end of 1992, when a member issued a call through the Internet for people to offer advice to the new Administration on critical issues involving technology.[25] According to CPSR, the response was "enormous," with responses centering on a common theme: the importance of the Internet and the need to expand networking capabilities.[26]

In March 1993, CPSR decided to establish an NII project of its own. The group's activities after that focused primarily on this area. That June, the summer 1993 issue of the CPSR Newsletter focused on the NII, including articles on community networks and the implications for libraries. Later that month, the CPSR

Board of Directors met in Washington with senior members of the Administration's NII policy team, congressional staffers working in the area, and leaders of other organizations concerned about the development of the NII. Because of the positive response they got to their ideas, the Board decided to write a position paper articulating a public-interest perspective on the NII.[27]

The National Education Association was already involved in promoting telecommunications for schools by 1992. That year it published *Educational Telecommunications*, which was the final report of the NEA Special Committee on Telecommunications.[28] One of the committee's findings was that distance learning networks had the capacity to reduce inequity and to be effective tools in school restructuring efforts. It also strongly recommended telephone service for every classroom.

Industry Activity

Clinton's entry into telecommunications policymaking was met with enthusiastic support from the industry, but industry's response concerning universal service for schools and libraries was vague. On March 23, 1993, the chief executive officers of the nation's leading local

and long-distance telecommunications companies[29] issued a joint public policy position statement "signaling strong industry-wide support for the communications technology initiatives envisioned by the. . . Administration." In general, the statement specified a set of principles consistent with *Technology for America's Economic Growth* and articulated the roles government and industry should play. The accompanying policy statement recommended, among other things, that—

- The existing High Performance Computing and Communications program be expanded to foster services and applications to serve the "urgent societal needs of a broad range of users and industries, such as K-16 education."
- The government "support and give the highest priority to research into applications and services that would provide for the urgent needs of the broad range of users in K-16 education."

Phase II: September 1993 to December 1994

The Clinton Administration released *The National Information Infrastructure: Agenda for Action* on September 15, 1993. In this document, the Administration articulated a refined vision of the NII, part of which was to extend the "universal service" concept to ensure

that information resources were available to all at affordable prices:[30]

> As a matter of fundamental fairness, this nation cannot accept a division of our people among telecommunications or information "haves" and "have-nots." The Administration is committed to developing a broad, modern concept of universal service—one that would emphasize giving all Americans who desire it easy, affordable access to advanced communications and information services, regardless of income, disability, or location.[31]

On the same day, President Clinton signed an Executive order establishing a private-sector counterpart to the IITF, the U.S. Advisory Council on the National Information Infrastructure (NIIAC or "Council").[32] The Council was charged with identifying appropriate government action within its charter to advise the Secretary of Commerce on matters related to the development of the NII. The Secretary appointed 37 members, representing industry, labor, academic, public interest groups, and state and local governments, to serve a two-year term.[33]

During 1994, the NTIA undertook many NII-related activities.[34] It published *20/20 Vision, The Development of a National Information Infrastructure*,[35] fifteen essays by telecommunications experts on information infrastructure development and how the Administration

could best achieve its goals. The essays were also the subject of a public conference in March 1994 co-sponsored by NTIA, the IITF Telecommunications Policy Committee, and the Annenberg Washington Program. That same month, NTIA also assisted in organizing a Conference entitled "Shaping the NII: Public Interest Summit." The goal of the conference was to provide a forum for various segments of the public interest community to address the broader social, economic, and political issues related to the NII. This was the first time the Administration and congressional representatives had an opportunity to see the "force" of the public interest community.

Also in 1994, NTIA held five public hearings around the country on universal service and open access, at which more than 1,100 persons attended and 230 witnesses testified. A summary of these hearings was published as a report, *The NII Field Hearings on Universal Service and Open Access: America Speaks Out*.[36] At four of the universal service hearings, over forty organizations presented technology demonstrations of NII applications and services.

Finally, NTIA conducted a Notice of Inquiry and Request for Comments (NOI) on Universal Service and Open Access Issues. The NOI gathered comments relevant to a

review of universal service issues and served as a record for analysis for making recommendations to the IITF, the FCC, and Congress. Nearly 100 parties commented in this proceeding.[37]

Public Interest Group Activity

The groups from Phase I were joined by another group during this phase: the Benton Foundation.[38] It increased its visibility by hiring a new Executive Director from the Electronic Frontier Foundation, Andrew Blau, a well-known public interest advocate.

The American Library Association continued its technology/telecommunications policy reporting and advocacy during Phase II. Its first action was to provide a summary and commentary on the Administration's Agenda for Action[39] and it continued to provide updates on the activities of the IITF and its working groups.

In late October 1993, the ALA, along with about 60 other organizations (including APT and CPSR), created a new public interest coalition, the Telecommunications Policy Roundtable. That month, the coalition released its statement, *Renewing the Commitment to a Public Interest Telecommunications Policy*.

During late 1993 and moving into 1994, the Association also assisted in developing "Shaping the National Information Infrastructure: The Public Interest Summit."[40] A representative from ALA also testified at a Senate hearing on telecommunications legislation about the importance of including libraries as universal service recipients.[41]

In general, as in Phase I, the ALA kept its members apprised of developments that would affect the availability of funds to support telecommunications in libraries and advocated strenuously the inclusion of language that would satisfy their needs.

As stated above, although the Benton Foundation had existed since 1981, it significantly increased its activities in the issue network during Phase II. In October 1993, it co-sponsored a conference with Columbia University's Institute for Tele-Information (CITI) and commissioned a number of academic papers on the future of universal service, some of which were very widely circulated. A wide range of issue network members attended the conference: Congressional and FCC staffers; public interest group representatives; and telecommunications and computer industry representatives. Blau also testified at a Senate hearing on S. 2195, the

National Public Telecommunications Infrastructure Act of 1994, "to ensure that capacity [was] reserved on telecommunications networks for noncommercial and civic uses."[42] This bill was a precursor to the Snowe-Rockefeller amendment that would be introduced the following year.[43]

The CPSR continued on its planned path to produce a paper outlining a public interest vision of the NII. In October 1993, its annual meeting focused on the NII and its members discussed and approved the draft paper at that time. On October 26, CPSR released its final report, *Serving the Community: A Public Interest Vision of the National Information Infrastructure*.[44] CPSR called for universal access—that all people should have affordable access to the NII. The group was very concerned that the NII would fail to provide universal access:

> The principle of universal access is much easier to articulate than to achieve. If network connections are not readily available, particularly in rural or economically disadvantaged areas, the NII will fail to serve those communities. . . It is critical that the designers of the NII undertake the necessary measures to ensure full network access to people in all sectors of the United States.[45]

CPSR went on to recommend that the Government guarantee equitable and universal access:

> To the extent that free-market principles cannot guarantee affordable access to a full range of NII services, the Administration must be publicly accountable for the achievement of this goal through some appropriate mix of legislation, regulation, taxation, and direct subsidies.[46]

Industry Activity

Similar to Phase I, industry remained for the most part focused on competitive issues and not on universal service. One industry group that did make recommendations on universal service, however, was the Computer Systems Policy Project (CSPP), a consortium of the chief executive officers of leading U.S. computer systems companies.[47]

The CSPP had already been active at this time in producing NII-related policy recommendations to the government. In its report, *Perspectives on the National Information Infrastructure: CSPP's Vision and Recommendations for Action*,[48] CSPP made three recommendations related to universal service:

- Access: An informed citizenry is essential to the Nation's growth, all individuals must have access to the NII.
- Affordability: To promote maximum use, the NII must be affordable.

- New Technologies: While it is impossible to anticipate all of the technologies that will eventually be part of the NII, the political and regulatory environment must encourage the development of new technologies and their incorporation in the NII.

CSPP touched on the aspects of advanced universal service—affordable access for all to new technologies—but never used the term or, more importantly, never recommended ways to make it happen. In this report CSPP also reiterated earlier recommendations[49] to enhance and expand the federal research agenda to bring the benefits of advanced technology to individual Americans in areas such as health care, education, and manufacturing.[50]

Of note, however, is that CSPP represents computer manufacturers not telecommunications companies. The telecommunications industry itself was essentially silent on the topic of advancing universal service in its advocacy statements.

Congressional Activity

Congress, after much effort during 1994, failed to produce a telecommunications reform bill to send to the President by the end of the year. Both the Senate and the House had included language that supported, in

varying degrees, universal service support to public institutions.

In the Senate, legislation (S. 1822) that had cleared the Commerce Committee on a vote of 18-2 was killed before reaching the Senate floor. Partisan bickering between Senators Ernest Hollings (D-SC), then Commerce Committee Chairman, and Bob Dole (R-KS), then the Minority Leader, over a list of "non-negotiable" demands, deemed by Hollings to favor the local exchange industry over the long-distance industry, kept the bill from a vote by the full Senate. Specifically, Hollings supported the long distance carriers, such as AT&T and MCI, that wanted incumbent local exchange carrier (ILEC) entry into the long distance market to be granted only when an individual ILEC met a 14-point competitive checklist. Dole supported the interests of ILECs, such as Bell Atlantic and BellSouth, that wanted a "date certain" after which they would be allowed to enter the long distance market.[51]

In the shadow of such inter-industry debates, language in the bill that would have required carriers to provide "educational institutions, health-care institutions, local and State governments, public broadcast stations, public libraries, other public

entities, community newspapers, and broadcasters. . . access to [telecommunications] services. . . at preferential rates" was struck from the bill while in Committee.

After six months, the House did pass a bill (H.R. 3636) in an overwhelming, bipartisan vote of 423-5. That bill would have extended universal service to include all nonprofit educational institutions, healthcare institutions, public libraries, public museums, or public broadcasting stations or entities. However, because no legislation had passed in the Senate, the bill died.

Phase III: January 1995 to April 1996

Vice President Gore advocated universal service for schools and libraries on January 9, 1995, when he spoke to the Federal-State-Local Telecom Summit in Washington. He began with a reference to children having shown him how they used their school computers to retrieve an historical document. He also cited the Administration's often-stated principles for telecommunications reform, one of which, of course, was to ensure universal service, and its commitment to linking schools and libraries to the Internet.

This phase also saw continued support for the Clinton-Gore goals by the Department of Education (DoED) and the NTIA. In February 1995, the DoED issued *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995*, the first in a series of reports documenting disparities in access to advanced telecommunications services in K-12 schools based on socioeconomic status, location, and race.[52]

The following month, the DoED established its Technology Challenge Grant Program and launched the "Get Connected" Campaign. The campaign was aimed primarily at "rural Americans, minorities, parents and children, senior citizens, individuals with disabilities, and low income persons." Larry Irving stated his belief that "once people realize that this technology has practical, helpful applications. . . they will embrace it and get connected."[53]

In June 1995, NTIA issued, *Connecting the Nation: Classrooms, Libraries, and Health Care Organizations in the Information Age*[54] and the following month, *Falling Through the Net*. *Connecting the Nation* provided a status report on the Clinton Administration's initiative to connect schools and libraries to the Internet. The report concluded that significant work remained to be

done before the goal of connecting classrooms and libraries to the NII could be realized. It also highlighted how government programs could serve to spur public-private partnerships to benefit even disadvantaged and remote areas of the country.

Falling Through the Net, a survey of telephone penetration and computer and modem ownership and use, revealed information "have-nots" were disproportionately found in rural areas and central cities. Proponents of government-supported advanced universal service would repeatedly cite this report in their future arguments.

The NIIAC, the private industry group supporting the IITF, published its two reports in January 1996. *The KickStart Initiative: Connecting America's Communities to the Information Superhighway*[55] and *A Nation of Opportunity: Realizing the Promise of the Information Superhighway*[56] both recommended actions to ensure access by schools and libraries to the "information superhighway."

Finally, in his January 1996 State of the Union address, President Clinton called for all schools and libraries to be connected to the Internet by the year 2000:

> In our schools, every classroom in America must be connected to the information superhighway, with computers and good software and well-trained teachers. We are working with the telecommunications industry, educators and parents to connect 20 percent of California's classrooms by this spring, and every classroom and every library in the entire United States by the year 2000. I ask Congress to support this education technology initiative so that we can make sure this national partnership succeeds.[57]

Days later, the DoED issued the second in its series of reports documenting the disparities in access to advanced telecommunications services in K-12 schools, *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995*.[58]

Also during this time, FCC Chairman Reed Hundt spoke out about the need not only for computers and the Internet in schools, but specifically, for those technologies to be brought to classrooms. He made numerous speeches,[59] at least one every month, in which he promoted the goal of connecting every classroom—not just every school—to the Internet. In his statement to the House Subcommittee considering telecommunications reform legislation, he stated:

> There are provisions [of H.R. 1555]. . . that I believe should be reexamined. In one vitally important policy area—bringing advanced telecommunications services into our classrooms and libraries and anchoring them in all our communities—I think we need to do more. . ..

> Every day, 45 million teachers and students enter a setting in which only 12% of the workplaces—the classrooms—have even basic phone lines. In this day and age, in which every shipping clerk is hooked up to a computer network and half of all workers use a computer at work, only 3% of the classrooms are networked. . ..
>
> A computer network connected to the classroom means that every teacher and child has access to the world's greatest libraries; every child can improve his or her math skills by working with tutors and interactive programs on-line.[60]

In an America Online interview on July, 24, 1995, Hundt stated, "In my own view the chief goal of communications policy in the country today should be to find a way to build communications systems into every classroom of every school in the country."

And, in response to the passage of both H.R. 1555 and S. 652, he said:

> I specifically want to commend Representatives Lofgren, Morella, Orton and Ney for advocating the importance of providing access to the information superhighway for our schools and libraries. I appreciate Chairman Bliley's commitment to working in conference to include language that insures such access. While this bill attempts to do many things, in the long run, it is connecting the classrooms that will pay the greatest dividends to America's future.[61]
>
> The Senate recognized all this in the Telecommunications Reform bill when it passed the Snowe-Rockefeller provision advocating networking of every classroom in the country.[62]

Public Interest Group Activity

The ALA remained extremely active during 1995, both reporting and advocating on telecommunications policy issues. It started 1995 by leading a conference, "How the Information Superhighway Will Affect You," the theme of which was "Is there a cybrary in your future?"[63] The following month, it held its annual midwinter conference, where one of the sessions focused on telecommunications and NII "hot issues and strategies."[64] In March, it quickly reported to its members through its ALA Washington Office Newsline (ALAWON) that the Senate had introduced telecommunications legislation[65] and shortly thereafter issued an action alert on issues on which ALA members needed to take action. One of those issues was telecommunications access for schools and libraries. [66]

In April, the ALA established an Office of Information Technology Policy to allow it to follow developments in this area more closely; it began work that June.[67] Establishing the Office was "part of the ALA Goal 2000 proposal, a five-year plan to position the association for the Information Age. . .[by] strengthening [its] role as an advocate for the public interest in a free and open information society." It was

"designed to complement the Washington Offices' efforts and serve as a public policy advocate for libraries in the area of information technology representing the information technology interests of libraries, librarians, and library users in the public policy arena, with special attention to National Information Infrastructure development."[68]

The ALA also held its annual Library Legislative Day in May. That year, it focused specifically on telecommunications issues, producing a fact sheet for its members to use in its advocacy visits to members.[69]

The next month, in June, the ALA presented a program called "Telecommunications Development and Policy: A State Perspective." This conference addressed the "expanding role of states in the development of our telecommunications infrastructure with experiences and perspectives from the field."[70]

Throughout the remainder of the year, the ALA issued news alerts on the telecommunications legislation in the Senate and the House. It also provided alerts on other funding issues, such as attempts to eliminate and then restore funding for the TIIAP grants. It also increased its informational and advocacy efforts as the Conference Committee members were named to reconcile the differences

between the House and Senate bills. As described below, the House version had no provisions to provide discounts on telecommunications services to schools or libraries. The ALA wanted to make sure that the Senate version of the bill prevailed.

As in the earlier two phases, Computer Professionals for Social Responsibility was very active during Phase III. One important activity by during this period was its "Telecom Post." This email newsletter, published whenever circumstances required, provided the public interest community with detailed information on the development of the Senate and House versions of what would become the Telecommunications Act of 1996. In addition to providing information, it also provided guidance to individuals on what to advocate to Congress as it debated what would become the 1996 Act.

Finally, it was during early May 1995 that the groups that would later establish the Education and Library Networks Coalition (EdLiNC) during the FCC rulemaking began working together. Their goal at this time was to ensure that provisions favorable to their constituencies would be included in the telecommunications legislation being considered by Congress at that time.[71]

Industry Activity

Echoing its emphasis in previous years, the telecommunications industry continued to focus nearly exclusively on the proposed competitive provisions of the reform legislation. For the local and long-distance companies, universal service was simply not a pressing issue.[72] A review of more than 450 news articles published during this time frame turned up no articles referring to industry involvement in promoting or even mentioning universal service as an issue of importance as the legislation was developed.[73] Instead, nearly all the articles focused on the debate over when and how to allow the incumbent local telephone companies and the long-distance companies into each other's lines of business. In fact, the only references to any industry opposition to expanding universal service to include schools and libraries was a passing reference in the ALA's newsletter:

> On Capitol Hill. . .supporters report that major parts of the telecommunications industry are fighting this provision strongly because they see it as a 'give away.'[74]
>
> The regional Bell companies continue to seek alternative language for this amendment and some Senators have indicated they would like to see the whole amendment removed.[75]

No references for support for the measure by industry were found.

Congressional Activity

In 1995, Congress finally succeeded in passing telecommunications reform legislation. The Telecommunications Act of 1996 grew out of two bills, S. 652 and H.R. 1555. When the Senate and House introduced their bills in 1995, they included not only different language and definitions, but based their bills on vastly different philosophies concerning the provision of universal service. For example, while the Senate explicitly stated that "citizens in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes,"[76] the House recognized no inherent benefit from access to technology.

The Senate. On January 9, 1995, Senator Larry Pressler (R-SD) spoke to the Senate Committee on Commerce, Science, and Transportation ("Commerce Committee"), of which he was the chair, and pledged that

both the Senate and House would pass major legislation to reform the 1934 Telecommunications Act by "the Fourth of July," calling it the "top priority" of the Commerce Committee. In his speech, Pressler cited the need to reform the nation's universal service policies but did not mention including schools or libraries in that new regulatory regime, although he did say that he intended to design a bill that would "deliver better quality of life through more efficient delivery of educational. . . service." During that same speech, Senator Pressler submitted for inclusion in the record a speech delivered that day by Vice President Gore to the Federal-State-Local Telecom Summit, discussed above. Pressler cited the close and cooperative working relationship between Gore and himself and hoped that they would work together in passing new legislation in 1995.[77]

Senator Pressler introduced S. 652, the Telecommunications Competition and Deregulation Act of 1995 in the Commerce Committee on March 22, 1995. It passed on a vote of 17-2. That same day, Senators Olympia Snowe (R-ME) and Jay Rockefeller (D-WV) introduced what would eventually become the Snowe-Rockefeller-Exon-Kerrey Amendment (Senators James Exon (D-NE) and Robert Kerrey (D-NE) later signed on as co-

sponsors to the Amendment after the S. 652 reached the full Senate). Senator Snowe was a long-time advocate of children's issues and Senator Rockefeller was a long-time advocate of rural education and healthcare.[78]

The amendment, which passed on a 10-8 roll call vote, was designed to expand universal service to public institutions by ensuring discounted rates for primary and secondary schools, libraries, and rural healthcare institutions, in spite of opposition from Senator Conrad Burns (R-MT) who said it seemed like just another government mandate and that schools should pay for their own computer equipment.[79]

Supporters of the Snowe-Rockefeller Amendment struggled to keep it intact as the bill made its way through the legislative process. The amendment met challenges both in the full Senate and in the Joint Conference Committee later in the year. The most concerted attack from within the Senate came from Senator John McCain (R-AZ). He proposed an amendment that would have completely eliminated Snowe-Rockefeller, but was defeated.

Then-Senator Robert Dole (R-KS) proposed an alternative to Snowe-Rockefeller that would have provided a fund developed from spectrum auctions to support

educational access. However, the spectrum he was proposing for this purpose was not very popular for commercial applications; therefore, such an auction probably would not have yielded a large fund.[80]

After about one week of debate, the Senate passed S. 652 on a vote of 81-18; the Snowe-Rockefeller Amendment passed 98-1. Reaction from the industry to the passage of S. 652 focused on its competitive measures and not on its universal service provisions. The public interest community, however, was invigorated by the inclusion of the schools and libraries provisions and stepped up their efforts to ensure the measure would become part of the final bill sent to the President.

The House of Representatives. On May 3, 1995, Rep. Thomas Bliley (R-VA) introduced H.R. 1555, the Communications Act of 1995. That bill did not include any provisions to ensure special rates for public institutions, only a requirement that

> To the extent that a common carrier establishes advanced telecommunications services, such plan should include recommendations to ensure access to advanced telecommunications services for students in elementary and secondary schools.[81]

During the May 11, 1995, committee hearing on this bill, FCC Chairman Reed Hundt testified on his desire to

see language added to expand universal service as part of the Clinton-Gore goal of "connecting the Nation's schools and libraries to the information superhighway by the year 2000."[82] Hundt also noted Speaker of the House Newt Gingrich's agreement on the "importance of bringing advanced telecommunications to the schools." Hundt then suggested five leadership principles that the government could embrace to ensure that "every classroom [w]ould have email and the capability to access the Internet":

- Assist with installation costs to encourage use of discounted services
- Identify a support mechanism that is fair and efficient
- Create no new bureaucracy
- Be technologically neutral
- Create the network and encourage other investments.

On the last point, Hundt was clear that he did not wish to see support via universal service for the purchase of computers, software, or teacher training.

The only mention of schools and libraries in the House bill was that "to the extent a common carrier establishes advanced telecommunications services, such plan should include recommendations to ensure access to

advanced telecommunications services for students in elementary and secondary schools."[83]

In August, the full House considered the bill. The House process requires that a bill first go through the "rules" process to determine how much time would be taken to debate a bill and what amendments would be considered and for how long. On Wednesday, August 2, at midnight, the House agreed on a vote of 255-156 to debate the bill under a modified closed rule the following day, August 3. This agreement allowed for a total of nine hours of debate and a set list of amendments to be considered. Ninety minutes was allotted for general debate, which would be followed by debate on each amendment. Amendments would be considered one after the other, with each given five minutes for pro and con arguments.[84]

Two amendments concerning universal service were being considered for introduction. Debate on an amendment proposed by Connie Morella (R-MD) and William Orton (D-VT) to provide affordable telecommunications for schools and rural hospitals permitted on the grounds that a satisfactory funding mechanism did not exist.[85] Representative Christopher Cox (R-CA) wanted to introduce a bill that would have permanently limited the universal service definition to voice-grade telephone service,

keeping it from ever growing, regardless of market forces. Additionally, it would have prohibited use of the federal universal service fund for providing advanced technologies, the fear being it could drive up the prices consumers would have to pay for these services. Ultimately, the Cox Amendment was defeated.[86]

Several members of the House expressed their disappointment and outrage about debating the bill in the middle of the night and out of sight of the public. Representative Marcy Kaptur (D-OH) was reported to have said:

> I feel tonight as I did during the savings and loan debate. . .that we are truly being muzzled, and that is not what representative democracy is all about. I feel sorry for America tonight.[87]

Vice President Gore issued a statement on August 3 saying in part:

> The telecommunications reform legislation being considered by the House of Representatives is abhorrent to the public interest and our national economic well-being. Without significant changes to the legislation, the President has said he will be compelled to veto it.
>
> In the early morning hours, the House today began debate on HR1555. They are expected to vote late tonight on the bill. It seems the House does not want the American people to see or hear what's in this legislation——and for good reason. They couldn't support it if they knew what HR 1555 contained.[88]

After three days of intense debate often lasting well into the night, the House passed H.R. 1555 on August 4, 1995, on a vote of 305-117.

The Conference Committee. One of the most striking differences between the two original bills was their treatment of providing access to schools, libraries, and rural healthcare providers. In committee, however, the Senate members prevailed and the Snowe-Rockefeller Amendment was included to provide access to schools, libraries, and hospitals.[89] The final language (see Table 2-1) was changed slightly, but the goals remained substantially the same:[90]

The compromise conference bill and report were finally approved by both houses of Congress on February 1, 1996. The report stated that schools and libraries had, at this point, limited access to advanced telecommunications services and that—

> telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on government services, and reports developed by federal, state, and local governments and information services which can be carried over the Internet.[91]

Table 2-1
Relevant Language of the
Snowe-Rockefeller Provisions

TELECOMMUNICATIONS SERVICES EDUCATIONAL PROVIDERS AND LIBRARIES: All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

ADVANCED SERVICES: The Commission shall establish competitively neutral rules–

- to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and
- to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

The bill was signed into law by President Clinton on February 8, 1996. By that time, more than $2 million had been spent on lobbying Congress.

Summary

This period saw an increasing awareness of advances in telecommunications services and applications. In 1994, the Internet was only just becoming a household word and World Wide Web had just been invented. By 1995,

when it finally passed telecommunications legislation, Congress perhaps had a clearer vision of the types of services that would be available through "advanced universal service." What is clear is that the Snowe-Rockefeller amendment did not come from out of nowhere in the spring of 1995.

Certainly, the Clinton Administration played a very strong leadership role in developing the atmosphere in which the Snowe-Rockefeller amendment was introduced and passed. However, the Senate, even in its failed attempt to pass legislation in 1994, had provided strong language to support providing non-profit organizations with affordable access to advanced telecommunications services.

This period also saw an increase in active participation by public interest groups. While they provided information to their constituencies throughout the period, they had significantly stepped up their advocacy programs by the beginning of 1995. In short, they had gained experience in the previous Congress; they saw what worked and what had not worked. They were ready to advocate their position when the new Congress came in. For example, as noted above, the ALA opened its Office of Information Technology Policy in 1995. Obviously, that

group had determined it needed a more focused approach to promote their positions.

What is also apparent from the documentation from this period is that the telecommunications industry was focused on very different goals than the public interest community—and for good reason. Industry had billions of dollars at stake during the development of the 1996 Act. The very futures of their corporations rested on the inclusion or exclusion of a couple of words. For them, universal service for schools and libraries was simply something they would have to consider later, specifically, during the FCC's rulemaking.

Notes

[1] The Clinton Administration defines the National Information Infrastructure (NII) as "a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips." Information Infrastructure Task Force (IITF), *The National Information Infrastructure: Agenda for Action*, September 15, 1993; available from the National Institute for Standards and technology's NII Virtual Library at http://metalab.unc.edu/nii/NII-Executive-Summary.html; accessed 16 September 1999.

[2] M. Moeller. "Technology: Data Superhighway," *Communications International*, 20(7) (July 1993): 16,20.

[3] *See* Carolyn Gedney, "Bush Initiative Parallels Gore Bill for Data 'Superhighway'," UIUCnet, vol.2, no. 5, October 1989; available from

http://www.cso.uiuc.edu/uiucnet/2-5-2.html; accessed 16 September 1999; Needham J. Boddie, "Cybertheft: Will Copyright Law Prevent Digital Tyranny on the Superhighway?"; available from http://www.lawsight.com/ip1.htm; accessed 16 September 1999; and John Markoff, "Scientists Share Data at Speed of Light", New York Times, available from http://www.cso.uiuc.edu/uiucnet/2-4-1.html; accessed 16 September 1999.

[4] William J. Clinton and Albert Gore, Jr., *Technology for America's Growth: A New Direction to Build Economic Strength* (Washington, DC: Government Printing Office, February 22, 1993).

[5] National Telecommunications and Information Administration (NTIA), NTIA Facts, May 8, 1998; available from http://www.ntia.doc.gov/ntiahome/ntiafact050698.htm; accessed 16 September 1999.

[6] The IITF Archive is available from http://www.iitf.nist.gov/; accessed 16 September 1999.

[7] IITF, "About the President's Information Infrastructure Task Force;" available from http://www.iitf.nist.gov/about.html; accessed 16 September 1999.

[8] Mr. Irving had previously served as Senior Counsel to the U.S. House of Representatives Subcommittee on Telecommunications and Finance. His full biography is available from http://www.ntia.doc.gov/ntiahome/irvbio.html; accessed 16 September 1999.

[9] The TIIAP remains an active program as of CY 1999.

[10] Since its inception in 1994, TIIAP has received more than 5,300 applications, requesting $2.1 billion, from across the country. Because TIIAP is a matching grant program, the applications have spawned hundreds of millions of dollars in commitments from local, state, and private sector sources. TIIAP has awarded 378 grants in 50 states, the District of Columbia, and the U.S. Virgin Islands. Approximately $118 million in Federal grant funds have been matched by more than $180 million in non-

Federal funds. A significant portion of the funding has gone to rural regions and rural states. For FY 1999, $18 million is available for TIIAP grant awards. For additional information on TIIAP, *see* the TIIAP home page at http://www.ntia.doc.gov/otiahome/otiahome.html; accessed 16 September 1999.

[11] The ALA is not necessarily a group one would immediately associate with technology advocacy; however, not only was the ALA very active in promoting the inclusion of libraries and schools in the definition of universal service, it also tracked a No. of other technology-related issues, such as IP/copyright, censorship, children's TV, electronic FOIA, NGI, TIIAP, and, in 1998, COPA. It is safe to say, the ALA was one of the earliest and staunchest supporters of technology for the library and classroom.

[12] APT, *Principles to Implement the Goal of Advanced Universal Service* (1993), 3.

[13] Ibid.

[14] Ibid, 6.

[15] APT, *Connecting Each to All* (1993), 6. One interesting point in this document is that although it was ahead of its time in advocating advanced universal service, it still emphasized the use of switched services -- the Internet uses packet-switching technologies and is certain to make switched services obsolete in years to come.

[16] American Library Association, *American Library Association Washington Office Newsletter* (*ALAWON*), 1, no. 5 (August 5, 1992); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v1n05.txt; accessed 16 September 1999.

[17] *See* U.S. Congress, Senate, Congressional Record (1 July 1992): S9538-59.

[18] American Library Association, *ALAWON*, 1, no. 18, December 18, 1992; available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v1n18.txt; accessed 16 September 1999.

[19] See, for example, American Library Association, *ALAWON*, 2, no. 18 (May 10, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n18.txt; accessed 16 September 1999; ALAWON, 2, no. 19 (May 18, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n19.txt; accessed 16 September 1999; ALAWON, 2, no. 26 (June 21, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n26.txt; accessed 16 September 1999; ALAWON, 2, no. 32 (July 30, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n32.txt; accessed 16 September 1999; et al., which contained updates and commentary on H.R. 1757, one of the precursors to Telecommunications Act of 1996.

[20] American Library Association, *ALAWON*, 2 No. 1 (Jan 6, 1993; available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n01.txt; accessed 16 September 1999.

[21] American Library Association, *ALAWON*, 1, no. 17 (December 18, 1992); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v1n17.txt; accessed 16 September 1999.

[22] American Library Association, *ALAWON*, 2, no. 7 (February 26, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n07.txt; accessed 16 September 1999.

[23] Ibid.

[24] American Library Association, *ALAWON*, 2, no. 15 (April 26, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n15.txt; accessed 16 September 1999.

[25] CPSR, "NII Project History"; available from http://www.cpsr.org/program/nii/nii-project-history.html; accessed 16 September 1999.

[26] Ibid.

[27] National Education Association, *Educational Telecommunications*, 1992, final report of the NEA Special Committee on Telecommunications (Washington DC: National Education Association, 1992), EDRS ED 358834.

[29] Ameritech, AT&T, Bell Atlantic, Bellcore, BellSouth, Cincinnati Bell, Inc., GTE, MCI, NYNEX, Pacific Telesis, Southern New England Telephone Company, Southwestern Bell Corp., Sprint, U S WEST.

[30] The other eight items were promoting private sector investment; promoting technological innovation and new applications; promoting seamless, interactive, user-driven operation; ensuring information security and network reliability; improving management of the radio frequency spectrum; protecting intellectual property rights; coordinating with other levels of government and with other nations; and providing access to government information and improving government procurement.

[31] IITF, *Agenda for Action*.

[32] Executive Order No. 12864 (1993).

[33] The members of the NIIAC were Mr. Delano E. Lewis, President and CEO, National Public Radio (Co-Chair, NIIAC); Mr. Edward R. McCracken, Chairman and CEO, Silicon Graphics (Co-Chair, NIIAC); Mr. Morton Bahr, President, Communications Workers of America AFL-CIO; Dr. Toni Carbo Bearman, Dean and Professor, University of Pittsburgh; Ms. Marilyn Bergman, Chairman of the Board American Society of Composers, Authors and Publishers; Ms. Bonnie Bracey, Teacher, Arlington County Schools; Mr. John F. Cooke, President, The Disney Channel; Ms. Esther Dyson, EDventure Holdings, Inc.; Mr. William C. Ferguson, Chairman and CEO, NYNEX Corporation; Dr. Craig Fields, Vice Chairman, Alliance Gaming Corporation; Mr. R. Jack Fishman, President, Lakeway Publishers, Inc. and Editor/Publisher, the *Citizen Tribune*; Ms. Lynn Forester, President and CEO, FirstMark Holdings, Inc.; The Honorable Carol Fukunaga, Hawaii State Senator; Mr. Jack Golodner, President, Department for Professional Employees, AFL-CIO; Mr. Eduardo L. Gomez, President and General Manager, KABQ Radio; Mr. Haynes G. Griffin, President, Vanguard Cellular Systems, Inc.; Ms. LaDonna Harris, President and Founder, Americans for Indian

Opportunity; Dr. George Heilmeier, President and CEO, Bellcore; Ms. Susan Herman, General Manager, Los Angeles Department of Telecommunications; Mr. James Houghton, Chairman and CEO, Corning Incorporated; Mr. Stanley S. Hubbard, Chairman and CEO. Hubbard Broadcasting; Mr. Robert Johnson, President, Black Entertainment Television; Dr. Robert E. Kahn, President, Corporation for National Research Initiatives; Ms. Deborah Kaplan, Vice President, World Institute on Disability; Mr. Mitchell Kapor, Chairman of the Board, Electronic Frontier Foundation; Mr. Alex J. Mandl, Executive Vice President, AT&T and CEO, Communications Services Group; Dr. Nathan Myhrvold, Senior Vice President, Advanced Technology, Microsoft Corporation; Mr. N.M. Norton, Jr. Attorney at Law, Wright, Lindsey & Jennings; Mr. Vance K. Opperman, President, West Publishing Company; Ms. Jane Smith Patterson, Advisor to the Governor for Policy, Budget and Technology, State of North Carolina; Ms. Frances W. Preston, President and CEO, Broadcast Music Incorporated; Mr. Bert C. Roberts, Chairman and CEO, MCI Communications Corp.; Mr. John Sculley, Chairman and CEO, Sculley Associates, Inc.; Ms. Joan Smith, Chairman, Oregon Public Utility Commission; Mr. Al Teller, Executive Vice President, MCA, Inc. and Chairman, MCA Music Entertainment Group; Mr. Laurence Tisch, President and CEO, CBS, Incorporated; and Mr. Jack Valenti, CEO and President, Motion Picture Association of America.

[34] Examples are taken from the 1994 NTIA Annual Report; available from http://www.ntia.doc.gov/ntiahome/94annrpt.html; accessed 16 September 1999.

[35] IITF, *20/20 Vision, The Development of a National Information Infrastructure*, March 4, 1994.

[36] IITF, Report of the Telecommunications Policy Committee, *The NII Field Hearings on Universal Service and Open Access: America Speaks Out* (September 1994).

[37] National Telecommunications and Information Administration, *Notice of Inquiry and Request for Comments on Universal Service and Open Access Issues*, Docket No. 940955-4255 (September 14, 1994). Comments were due by December 14, 1994.

[38] The Benton Foundation advocates public policies and documents the "effective uses of new communications tools that will define the public interest in the information age." Benton Foundation Web Site, available from http://www.benton.org/About/foundation.html; accessed 30 September 1999

[39] American Library Association, *ALAWON*, 2, nos. 38 and 39 (September 16, 1993); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n38.txt and http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v2n39.txt; accessed 16 September 1999.

[40] Discussed in the NTIA activities section above.

[41] American Library Association, *ALAWON*, 3, no. 25 (May 31, 1994); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v3n25.txt; accessed 16 September 1999.

[42] U.S. Congress, Senate, Congressional Record (Routine Proceedings) (22June 1994): S7385-S7477. Other witnesses included Hawaii State Senator Carol Fukunaga, Honolulu, on behalf of the National Conference of State Legislatures; Henry J. Cauthen, South Carolina Educational Television Network, Columbia; George P. Connick, University of Maine, Augusta; Anthony T. Riddle, Minneapolis Telecommunications Network, Minneapolis, MN, on behalf of the Alliance for Community Media; Andrew Blau, Benton Foundation, Washington, DC; and Monroe E. Price, Yeshiva University, New York, NY.

[43] Andrew Blau, Benton Foundation, interviewed by author via telephone, 12 February 1998, New York/Washington, tape recording.

[44] CPSR, NII Project History; available from http://www.cpsr.org/program/nii/nii-project-history.html; accessed 16 September 1999. The report is available from http://www.cpsr.org/cpsr/nii/cpsr_nii_policy.txt; accessed 16 September 1999.

[45] CPSR, *Serving the Community: A Public-Interest Vision of the National Information Infrastructure*; available from http://www.cpsr.org/cpsr/nii//cpsr_nii_policy.txt; accessed 16 September 1999.

[46] Ibid.

[47] Apple, Compaq, Data General, Dell Computer, Hewlett-Packard, IBM, Intel, NCR, Silicon Graphics, Stratus Computer, Sun Microsystems, and Unisys. Additional information is available from the CSPP web site at http://www.cspp.org; accessed 16 September 1999.

[48] CSPP, *Perspectives on the National Information Infrastructure: CSPP's Vision and Recommendations for Action*, (Washington, DC, January 12, 1993).

[49] CSPP, *CSPP Agenda for the 103rd Congress* (Washington, DC, October 1992).

[50] CSPP, *Perspectives on the National Information Infrastructure*.

[51] Speech by Vice President Al Gore at the Center for Communication, New York, NY (October 17, 1994); available from http://www.eff.org/pub/GII_NII/Govt_docs/gore_cfc_101794.speech; accessed 1 November 1999. See also Vigdor Schreibman, "S. 1822 Dead! Hollings Throws in the Towel," Federal Information News Service Special Report, September 23, 1994; available from http://sunsite.utk.edu/FINS/Special_Reports/Fins-SR2-35.txt; accessed 1 November 1999; and Adam D. Thierer, *Senator Dole's Welcome Proposal for Telecommunication Freedom*, The Heritage Foundation Backgrounder Update #233 (updating Issue Bulletin No. 191, "A Guide to Telecommunications Deregulation Legislation," June 3, 1994), August 24, 1994; available from http://heritage.org/library/categories/regulation/bgu233.html; accessed 1 November 1999.

[52] U.S. Department of Education, National Center for Education Statistics, *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995* (Washington, DC, May 1997).

[53] American Library Association, *ALAWON*, 4, no. 22 (March 11, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n22.txt; accessed 16 September 1999.

[54] NTIA, Office of Telecommunications and Information Applications, *Connecting the Nation: Classrooms, Libraries, and Health Care Organizations in the Information Age* (Washington, DC, June 1995).

[55] United States Advisory Council on the National Information Infrastructure, *The KickStart Initiative: Connecting America's Communities to the Information Superhighway* (Washington, DC, January 30, 1996).

[56] United States Advisory Council on the National Information Infrastructure, *A Nation of Opportunity: Realizing the Promise of the Information Superhighway* (Washington, DC, January 30, 1996).

[57] President William J. Clinton, 1996 State of the Union Address (January 23, 1996).

[58] U.S. Department of Education, National Center for Education Statistics, *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995* (Washington, DC, May 1997).

[59] All of Reed Hundt's speeches as FCC Chairman are available from the FCC Web Site at http://www.fcc.gov/Speeches/Hundt/; accessed 16 Septmeber 1999.

[60] Statement of Reed E. Hundt to the House Subcommittee on Telecommunications and Finance of the Committee on Commerce on H.R. 1555, The Communications Act of 1995, May 11, 1995.

[61] Statement by Reed Hundt regarding passage of H.R. 1555, The Communications Act of 1995, August 4, 1995.

[62] Speech by Reed E. Hundt to the Fall Conference of the National Council for Urban Economic Development, "The Future is Now—Be There!", Washington, DC, October 2, 1995.

[63] American Library Association, ALAWON, 4, no. 3 (January 13, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n03.txt; accessed 16 September 1999.

[64] American Library Association, *ALAWON*, 4, no. 6 (January 25, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n06.txt; accessed 16 September 1999.

[65] American Library Association, *ALAWON*, 4, no. 20 (March 9, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n20.txt; accessed 16 September 1999.

[66] American Library Association, *ALAWON*, 4, no. 24 (March 17, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n24.txt; accessed 16 September 1999; 4, no. 28 (March 23, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n28.txt; accessed 16 September 1999; 4, no. 30 (March 29, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n30.txt; accessed 16 September 1999; and 4, no. 32 (March 31, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n32.txt; accessed 16 September 1999.

[67] American Library Association, *ALAWON*, 4, no. 35 (April 18, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n35.txt; accessed 16 September 1999.

[68] Ibid.

[69] American Library Association, *ALAWON*, 4, no. 37 (May 4, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n37.txt; accessed 16 September 1999.

[70] American Library Association, *ALAWON*, 4, no. 52 (June 7, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n52.txt; accessed 16 September 1999.

[71] *See* American Library Association, *ALAWON*, 4, no. 37 (May 4, 1995) and *ALAWON*, 4, no. 47 (May 25, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n37.txt

and http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n47.txt; accessed 16 September 1999.

[72] An excellent article that summarizes much of the political atmosphere leading into 1995 is Willie Schatz, "Cutting the Gordian Knot," *Upside*, 7, 1 (January 1995): 64-73.

[73] This search was conducting using the NEXIS-LEXIS Universe online research service. It used the search topics "telecommunications policy" and "telecommunication competition," further refined with the terms "long distance," local exchange," "cable," and "public interest."

[74] American Library Association, *ALAWON*, 4, no. 34 (April 14, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n34.txt; accessed 16 September 1999.

[75] American Library Association, *ALAWON*, 4, no. 52 (June 7, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n52.txt; accessed 16 September 1999.

[75] Ibid.

[76] U.S. Congress, Senate, 104th Cong., 1st Sess., S. 652, *The Telecommunications Competition and Deregulation Act of* 1995, Title I, Sect 103 § 253; available from http://thomas.loc.gov/cgi-bin/bdquery/D?d104:1:./temp/~bdcbd6:@@@L|/bss/d104query.html|; accessed September 16, 1999.

[77] U.S. Congress, Senate, Senator Pressler (R-SD) speaking at the Commerce Committee's Hearing on New Legislation on Telecommunications, January 9, 1995.

[78] Kevin Joseph, Minority Staff, Senate Commerce Committee, interviewed by author, 30 October 1997, Washington, tape recording.

[79] Rebecca S. Weiner, *Committee Markups*, "Senate Committee Approves Telecommunications Act," State News Service, 23 March 1995.

[80] CPSR, *Telecom Post*, no. 4 (June 6, 1995); available from http://www.cpsr.org/telecom-post/telepost.04.html; accessed 16 September 1999.

[81] H.R. 1555, SEC. 247(b)(5). UNIVERSAL SERVICE, EDUCATIONAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES.

[82] Statement of Reed E. Hundt, FCC Chairman, on H.R. 1555, The Communications Act of 1995, before the Subcommittee on Telecommunications and Finance Committee on Commerce, U.S. House of Representatives, May 11, 1995; available from http://www.fcc.gov/Speeches/Hundt/spreh506.txt; accessed 16 September 1999.

[83]Title I, Sections 246(b)(5) and 250 were approved without amendment. "(5) EDUCATIONAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES. To the extent that a common carrier establishes advanced telecommunications services, such language should include recommendations to ensure access to advanced telecommunications service for students in elementary and secondary schools." U.S. Congress, House, 104th Cong., 1st Sess., H.R. 1555, The Communications Act of 1995, Title I, Sect. 101 §246(b)(5) (1995).

[84] CPSR, *Telecom Post*, no. 11 (August 6, 1995); available from http://www.cpsr.org/telecom-post/telepost.11.html; accessed on 16 September 1999.

[85] Rep. Bliley is reported to have assured Rep. Morella that the conference committee proceedings on S. 652 and H.R. 1555 would allow for the S652, Snowe/Rockefeller language to be considered. CPSR, *Telecom Post*, no. 11 (August 6, 1995); available from http://www.cpsr.org/telecom-post/telepost.11.html; accessed on 16 September 1999.

[86] see American Library Association, *ALAWON* 4, no. 47 (May 25, 1995); available from http://www.lib.ncsu.edu/stacks/a/alawon/alawon-v4n47.txt; accessed 16 September 1999.

[87] CPSR, *Telecom Post*, no. 11 (August 6, 1995); available from http://www.cpsr.org/telecom-post/telepost.11.html; accessed on 16 September 1999.

[88] Ibid.

[89] S. 652, 104th Cong., 1st Sess., Title I, Sect. 103 § 264 (1995).

[90] The amendment also included provisions for rural healthcare clinics. That language is not included here because it not the subject of this research.

[91] U.S. Congress, Senate, Joint Explanatory Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 1996.

CHAPTER 3
THE FCC'S UNIVERSAL SERVICE RULEMAKING: MARCH 1996 THROUGH MAY 1997

As described in the previous chapter, Congress passed landmark legislation affecting universal service for schools and libraries in the Telecommunications Act of 1996. However, the Federal Communications Commission (FCC) performed even more groundbreaking activity during the required rulemaking proceeding. Congress gave the FCC wide latitude in the Act to interpret the universal service provisions either narrowly or broadly; the FCC chose the latter.

This chapter summarizes activities taking place during the time of the rulemaking, which occurred between March 1996 and May 1997. The first section highlights activities outside the actual rulemaking process. The second and third sections provide an overview of the FCC's rulemaking proceeding and a summary of issue network participation in that proceeding. The fourth section highlights the FCC's Universal Service Rules, providing a general picture of the context within which the schools and libraries section was written. The

following section provides a detailed summary of the schools and libraries rules. Some non-contentious portions of the schools and libraries rules are described here because, like the discussion of the other parts of the rules, they provide an explanation of the overall program. This understanding is germane to the discussion in Chapter Four of attacks on the schools and libraries program after it was instituted and to the analysis of the political influence on the FCC during the rulemaking, the subject of Chapter Five.

Issue Network Activities Outside the Rulemaking

While the Federal-State Joint Board on Universal Service and the FCC conducted the rulemaking, the rest of the issue network was active in seeking to have its policy positions heard and included in the final rules. They did, of course, submit comments in response to the Notice of Proposed Rulemaking (NPRM), but they also undertook other activities, including producing public advocacy booklets and participating in various events aimed at promoting technology in public institutions, most notably, the NetDay Project. NetDay activities are discussed within the context of each issue network

sector's activities. Additionally, the FCC and Joint Board provided insights into their decision making process through speeches given during this time frame.

FCC Activities

This section focuses on the speeches made by FCC and Joint Board Chairman Reed Hundt during this time frame. Although the other commissioners and Joint Board members may not have agreed with him privately on everything, both the Joint Board's recommendation and the FCC's final rules were approved unanimously. Hundt's statements, therefore, while they do not completely mirror the final rules, are used here as a proxy for the beliefs of the Joint Board and the FCC.

Hundt wasted no time making his feelings known about implementing the Snowe-Rockefeller provisions of the 1996 Act. One March 1, 1996, just a few days before the proceeding began, Chairman Hundt delivered a speech to the Iowa Distance Learning Association. In that speech, called "Fulfilling The Promise," Hundt stated:

> [It] hurts children to go to schools that are cut off from the information age. In classrooms, phone service is almost nonexistent. In only 9 percent of *classrooms* is there Internet access—although the World Wide Web is the path to equal opportunity in

> education for all children in our country. That means only 10% of children have regular access to advanced telecommunications tools. And those students tend to be in the most affluent schools districts.[1]

In fact, Chairman Hundt made numerous references to classroom access in his speech:

> The good news is that a recent Education Department study found that we are making progress as a nation in wiring our *classrooms.* Half of the nation's public schools have hooked up to the Internet.. . .The bad news is that this means that fewer than half our *classrooms* have Internet access. . ..
>
> *There is a world of difference between the availability of computers in schools, and the availability of computers in each classroom.*
>
> The Department of Education study also found that minority and low-income students are less likely to have *classroom* access to the Internet than wealthier students.
>
> America's 4 million children with disabilities can have a much, much brighter future if we put communications technology in every *classroom.*[2]

Hundt also made reference in this speech to the Clinton Administration's participation in NetDay, a project to wire classrooms, that was being spearheaded by the private sector in California:

> [On] March 9th, the President, together with members of the telecommunications industry, educators, and parents, will jumpstart the networking of California's schools. By the end of this year, 20% of our largest state's classrooms will be on the information superhighway.[3]

Also in March, in a speech to the Consortium for School Networking, Hundt reiterated many of his same points, again stating the Administration's and his desire to connects classrooms to the Internet:

> The dream of networking classrooms began with Vice President Al Gore. He first coined the term "information superhighway" over 20 years ago. President Clinton and the Vice President have set the goal of connecting every classroom and library in America to the information superhighway by the year 2000.
>
> I was privileged to join the President, the Vice President, members of the telecommunications industry, educators, students and parents in California on March 9, "NetDay '96." Some 20,000 volunteers across the state installed 6 million feet of high-speed cable in schools. We need to duplicate NetDay in every community in this country.
>
> Part of the FCC's task in implementing the new law is to create new incentives to put communications technology in every classroom. . . I'm even more hopeful that we won't disagree on the importance or the ways to put communications technology in every classroom. . . Last week all commissioners agreed to start asking for public comments on how to make sure that all schools, classrooms, health care providers, and libraries get networked.[4]

Throughout the rulemaking proceeding, Hundt continued to make references to how new rules would benefit students by bringing telecommunications technology and the Internet to classrooms. In retrospect, it certainly seems clear that he intended to lobby his fellow Joint Board and Commission members to include language in the

rules that would allow universal service discounts to be used for that purpose. One of his most prophetic statements came just a month and a half before the Joint Board released its recommended decision. Hundt asked his audience at the Children Now Conference, "Children and the Information Superhighway: Directions for the Future":

> We must decide, will we provide support for schools building the ramp all the way to every classroom or will the support stop at the school wall? Will the ramp be a high speed, high bandwidth connection that puts schools on the cutting edge of technology? . . . what really should be wired is every single classroom in the country. . . we [cannot] afford NOT to wire classrooms and give our children the tools of the 21st century to learn and grow.[5]

In this last speech, Hundt also alluded to another aspect of the recommendation—that all schools would not receive the same level of support. He cited the vast differences in school funding nationwide and stated that "[we] need to have a policy that recognizes the disparities between schools and helps to bridge the gap."[6]

When the Joint Board released its decision, Hundt not only reiterated his support for the content of the proposal, he also made reference to the bipartisan and unanimous nature of the recommended decision:

> By providing discounts on all telecommunications services, on internal wiring, as well as on Internet access, the *bipartisan* Joint Board on Universal Service has

> shown its dedication to ensuring schools get the full spectrum of tools they need.
>
> My thanks and compliments go to the President and the Vice President for their leadership as well as to Senators Snowe, Rockefeller, Exon and Kerrey who were instrumental in [leading this effort]. My thanks go to all the other *bipartisan* senators, congressmen, and other leaders who supported this initiative.
>
> We have a lot of work ahead of us as we finalize the guidelines in the next few months. But the support and dedication of the joint board members in reaching this *unanimous* decision today sets us on the [correct path forward].[7]

This focus on bipartisanship and unanimity continued throughout the FCC's deliberation of the Recommended Decision. Perhaps to remind the Senators who had voted in favor of the amendment about that bipartisanship, Hundt stated in his testimony to the Committee on Commerce, Science and Transportation on March 12, 1997, that "the Joint Board voted unanimously—Democrats and Republicans, state and federal commissioners, and the consumer advocate—on all [its] recommendations."

On May 27, 1997, Reed Hundt tendered his resignation to the President. In his speech to his staff, however, he was clearly proud of his accomplishments with respect to the schools and libraries program, saying:

> This FCC has done more for K-12 education than the federal government has ever done before, with the sole exception of the school lunch program. This FCC has done more to provide

> resources to libraries. . . than the federal government has ever done before.[8]

Hundt stayed on at the FCC until his successor, William Kennard, was sworn in on October 29, 1997.

Clinton Administration Activities

President Clinton and Vice President Gore remained active during the rulemaking. In addition to public statements in support the schools and libraries provisions, they also took part in California's NetDay and the "National NetDay" kick-off meeting in Washington in July 1996. It was at that kick-off meeting that the Vice President first advocated that the "E-Rate should be a free rate." This proposal was not adopted, but it definitely set the tone that the Administration wanted to see a significant level of discounts in the universal service rules.

The Department of Education played an important role in the Administration's overall activities during this time. In addition to the comments it submitted in the rulemaking, it released in July 1996 its long-awaited National Technology Plan, *Getting America's Students Ready for the 21st Century: Meeting the Technology*

Literacy Challenge, at the NetDay National meeting. This report presented a framework within which educators could build their technology programs to meet the goal of the Technology Literacy, to ensure that all children are equipped with "computer skills and the ability to use computers and other technology to improve learning, productivity, and performance."[9] The framework had four components:

- All teachers in the nation would have the training and support they need to help students learn computers and the information superhighway—Upgrading teacher training is key to integrating technology into the classroom and to increasing student learning.

- All teachers and students would have modern multimedia computers in their classrooms—Computers become effective instructional tools only if they are readily accessible by students and teachers.

- Every classroom would be connected to the information superhighway—Connections to networks, especially the Internet, multiply the power and usefulness of computers as learning tools by putting the best libraries, museums, and other research and cultural resources at our students' and teachers' fingertips.

- Effective software and on-line learning resources would be an integral part of every school's curriculum—Software and on-line learning resources can increase students' learning opportunities, but they must be high quality, engaging, and directly related to the school's curriculum.[10]

This report complemented the work underway at the FCC.

Early the next year, in his 1997 State of the Union address, Clinton built on the previous year's technology goals by including in his 10-point education action plan a goal "to connect every classroom and library to the Internet by the year 2000" and "help all students become technologically literate":[11]

> We must bring the power of the Information Age into all our schools. Last year, I challenged America to connect every classroom and library to the Internet by the year 2000, so that, for the first time in our history, children in the most isolated rural towns, the most comfortable suburbs, the poorest inner city schools, will have the same access to the same universe of knowledge. . ..
>
> Our effort to connect every classroom is just the beginning. Now, we should connect every hospital to the Internet, so that doctors can instantly share data about their patients with the best specialists in the field.

Finally, in what could be a glimpse into future initiatives by the Clinton-Gore Administration, Clinton stated:

> But we cannot stop there. As the Internet becomes our new town square, a computer in every home—a teacher of all subjects, a connection to all cultures—this will no longer be a dream, but a necessity. And over the next decade, that must be our goal.

Clinton's plans, however, included more than just a call for connecting classrooms to the Internet. Throughout the year, the President would build on

existing programs and initiate a new program aimed at increasing technology literacy. After the State of the Union address, the Department of Education issued its third report on the status of deployment of advanced telecommunications services in K-12 schools and published a review of past and planned activities in support of the President's goals:

- The Private Sector Response. Some of the nation's largest and most innovative technology and telecommunications companies have contributed resources and energy to work in partnership with schools and communities in meeting the President's goals.

- Tech Corps. In October, the President announced the U.S. Tech Corps, a volunteer organization which enables high-tech workers from the private sector to assist teachers and schools to put the information age at the fingertips of their students.

- America's Technology Literacy Challenge. In his 1996 State of the Union Address, President Clinton asked Congress to fund a $2 billion, five-year Technology Literacy Challenge designed to achieve the four educational technology goals and to spur investment in education technology. The Challenge builds on the Secretary of Education's national plan, Getting America's Students Ready for the 21st Century, Meeting the Technology Literacy Challenge.

- The Technology Innovation Challenge Grants. This component of the technology literacy challenge invites school systems, colleges, universities, and private businesses to form partnerships to develop creative new ways to use technology for learning. Each federal dollar is matched by more than 3 to 1 by local and private funds.

- Universal and Affordable Access to Advanced Telecommunications. President Clinton signed into law the Telecommunications Act of 1996, which ensures that all U.S. schools and libraries have affordable access to advanced telecommunications services.

- NetDays. On March 9, 1996, the President, Vice President, and more than 20,000 volunteers laid six million feet of cable connecting thousands of California schools with the technology needed to link classrooms, libraries, and laboratories to the information superhighway. This effort sparked an enormous response around the Nation, and in the fall of 1996 more than 40 states organized and participated in NetDays, wiring more than 25,000 schools, using over 250,000 volunteers.

- 21st Century Teachers. This program encourages teachers to help each other to understand and learn how to use new technologies in the classroom. The National School Boards Association, the National PTA, the National Education Association, the American Federation of Teachers, and many other business and professional organizations have helped launch this initiative.

Congressional Activities

On March 12, 1997, Sen. John McCain (R-AZ), Chairman of the Senate Commerce Committee, held the first of a series of oversight hearings on the Telecommunications Act of 1996. Of the hearings main topics, one was the universal service discount program for schools and libraries.[12] As reported by ALA in its newsletter:

> Overall the hearing went well for libraries and education, although there were numerous questions on the library discount provision. The intra-industry conflicts between the local and long-distance companies at the hearing were evidence of the enormous challenge the committee and the FCC face to implement universal service while promoting a competitive telecommunications market. In contrast the library/education portion of the universal service battle is relatively small, but one clearly in the public interest.

Although Senator McCain was clearly not a supporter of the program, the Senators who had supported the measure, Olympia Snowe (R-ME) and Jay Rockefeller (D-WV), defended it. Both provided cover for Chairman Hundt as he was being questioned by the committee.[13]

Other witnesses at the hearing included four representatives from the local and long distance telephone industries——Bill Barr, Senior Vice President, GTE Corporation; Anne K Bingaman, President of Local Services for Comptel (LCI); Gail McGovern, Vice President of AT&T's Consumer Services Division; and Roy Neel, President of the United States Telephone Association. These witnesses argued primarily over traditional universal service (i.e., support for bigh-cost/rural areas and low-income consumers), access charges, and the broader issues of competition.[14] Only one witness, Anthony Wong, testified on behalf of EdLiNC to urge

continued Congressional support for the schools and libraries proposal.

Public Interest Group Activities

Without a doubt the most significant public interest development during this time frame was the formal establishment of the Education and Library Network Consortium, or "EdLiNC." This group evolved into a powerful force during the rulemaking by bringing together the interests of public schools, private schools, and libraries. These groups often work toward different goals and have different supporters within Congress. In this case, however, they presented a united front and lobbied effectively for their position. EdLiNC's specific recommendations in response to the FCC's Notice of Proposed Rulemaking, along with those of other public interest groups (PIGs), are discussed below.

Industry Activities

Industry was very splintered in its goals for the Act and was concentrating on the competitive aspects of the bill, rather than on what they perceived at the time

as a small increase in the universal service program. During the rulemaking, however, with a few exceptions, industry emerged as a force against providing any expanded discount program to schools and libraries.

Overview of the FCC's Rulemaking Proceeding

In March 1996, the FCC issued a Notice of Proposed Rulemaking (NPRM) on Universal Service.[15] The NPRM also established a Federal-State Joint Board composed of three FCC Commissioners (the Chairman and two commissioners), four state public service commission representatives nominated by the National Association of Regulatory Utility Commissioners, and one utility consumer advocate nominated by the National Association of State Utility Consumer Advocates. This group was led by FCC Chairman Reed Hundt and was charged with making recommendations to the FCC on how to interpret the Act's universal service provisions.[16]

Comments to the NPRM were due to the Joint Board in April 1996, and reply comments were due one month later. Then, in July 1996, the FCC issued a notice requesting further comment on 72 specific questions; responses to that notice were due in August. On November 8, 1996, the

Joint Board released its Recommended Decision and the public then had a chance to provide comments and reply comments on the proposed rules. Based on the Joint Board's recommendations, as well as the comments filed in response to the recommendations, the FCC adopted its final rules in May 1997. These rules were nearly identical to the Joint Board's recommendations.

Issue Network Participation in the FCC's Rulemaking

Like the period leading up to the signing of the 1996 Act, the Administration, public interest groups, and industry moved forward to promote their agendas. They provided, in total, a record of more than 500,000 pages for the Joint Board and FCC to consider in developing the universal service rules. Comments of representative issue network members are summarized in this section.

Administration and Other Government Participants

The federal government, through the NTIA and the Department of Education, provided strong support for the schools and libraries discounts in their comments throughout the rulemaking process. In fact, both these

organizations promoted the idea that the "e-rate should be a free rate," meaning that basic telecommunications services should be provided to schools and libraries for free; more advanced services would be made available at discounted rates.[17]

The comments submitted by state government can be divided into two groups: state education groups and state public service commissions. The former tended to support broader subsidies along the line of what the federal Department of Education supported, while the latter tended to focus on the more traditional forms of universal service, providing support to low-income consumers and carriers serving high-cost areas, and recommended a more restrained approach to providing subsidies to schools and libraries.

Public Interest Group Participants

Public interest groups maintained their high profile during this period, with approximately 50 such groups filing comments in the proceeding. Twelve "traditional" telecommunications PIGs were present, but they were joined by *39* PIGs representing education and library interests.

As noted earlier, EdLiNC was a particular force in the rulemaking. Having joined previously disparate factions of the educational and library communities under a single banner, it was able to present a united—and high-profile—front to the Joint Board and the Commission.

Industry Participants

Many industry commenters put forth their own proposals for the schools and libraries fund. Nearly all stated their belief that the FCC only had the authority to mandate a fund that would pay for "telecommunications services."[18] In these parties' opinion, Internet service, which is classified as an "information service" under the 1996 Act[19] and the internal connections necessary to provide access to classrooms should not and could not be provided through the universal service fund because they were not "telecommunications services."[20]

Industry representatives also recommended that schools and libraries qualify for the service discounts based on a set of criteria. For example, the United States Telephone Association (USTA), stated that schools and libraries, as part of their "bona fide request,"

should provide their plans to fund seven other components "to ensure the successful implementation of the benefits anticipated by Congress:

- Connectivity: Lines must be in place so that qualified institutions can access the Information Superhighway—outside lines are required to connect to the network
- Inside Wire: Inside wire is necessary to connect the individual classrooms and/or the computer lab
- Hardware: The necessary equipment, including telephones, computers, modems, televisions and VCRs, etc., must be available at each qualified institution
- Software: Computer software must be available to access information—this should include updating software as needed
- Training: Teachers, students and librarians must be taught to use the services provided in order to gain the most benefit from them—the necessary resource material must also be available
- Cultural/Societal Barriers: Special programs may have to be instituted to eliminate any such barriers
- Ongoing Operations Support: This will be necessary to ensure continuing quality and effectiveness.[21]

Another industry group, the National Cable Television Association (NCTA), recommended that only the core services outlined in the Act should be provided to schools and libraries at a discount, and no more. The NCTA was also careful to point out that the FCC should adopt only technologically neutral rules,[22] meaning that

the focus should be on *services* rather than on specific *technologies*. For example, if a cable company is able to provide the same service as a telecommunications company, it should be eligible to provide that service.

Most of the industry commenters pointed out their belief that the Act called for the FCC only to "enhance" access to information and advanced telecommunications services, not to provide discounts to pay for them.[23] Of particular note, because of future criticism of the subsidy, Bell Atlantic, in its comments, proposed a fund that would be collected through a "surcharge on end-user bills."[24]

Overview of the FCC's Universal Service Rules

The FCC's rules addressed many universal service issues, not just services to be provided to schools and libraries. The rules also addressed the following: universal service principles; the definition of universal service (what services to support); affordability of services; carriers eligible for universal service support; high-cost support; support for low-income consumers; issues unique to insular[25] areas; support for healthcare providers; Subscriber Line Charge (SLC) and

Carrier Common Line Charge (CCLC); and universal service fund administration. Each of these issues is briefly summarized in the following subsections.

Universal Service Principles

The 1996 Act set forth six principles to guide the Commission in establishing policies for the preservation of universal service:

1. Quality and rates
2. Access to advanced services
3. Access in rural and high-cost areas
4. Equitable and nondiscriminatory contributions
5. Specific, predictable, and sufficient support mechanisms
6. Access to advanced telecommunications services for schools and libraries, rural health care providers, and libraries.[26]

The 1996 Act also allowed the Commission to consider additional principles, "consistent with the Act [and] necessary to promote the public interest, convenience and necessity."[27] The FCC used this provision to support its inclusion of the principle of "competitive neutrality" in the definition of universal service. Competitive neutrality required that universal service support mechanisms and rules be applied in a manner that would not favor one technology over another, e.g., wired over wireless.[28]

Definition of Universal Service

Section 254(c)(1) of the Act required the FCC to define the telecommunications services to be supported by universal service support mechanisms. The definition of supported services included:

- Voice-grade access to the public switched network, with the ability to place and receive calls
- Dual Tone Multifrequency (DTMF) signaling or its functional equivalent (touch-tone)
- Single-party service
- Access to emergency services
- Access to operator services
- Access to interexchange services
- Access to directory assistance.
- Support for toll limitation services (includes both toll blocking and toll control) for low-income consumers.

As recommended by the Joint Board, the FCC would convene a Federal-State Joint Board to review this definition on or before January 1, 2001.[29]

Affordability

In its deliberations, the Joint Board found a high correlation between service affordability and subscribership levels. The FCC cited this finding in its decision to investigate further the factors contributing to low penetration rates where subscribership levels are

particularly low. Also, the FCC ruled that states should monitor rates and other factors, such as subscribership levels, to ensure affordability.[30]

Carriers Eligible for Universal Service Support

The FCC ruled that it would employ the statutory criteria set out in the Act[31] to determine which carriers should be designated eligible telecommunications carriers. These criteria mandated that carriers offer all the services supported by the federal universal service support mechanism throughout their service areas to be eligible for universal service support. Specifically, a carrier would have to: (1) offer all of the services that are supported by the federal universal service mechanism; (2) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and, (3) advertise the availability and charges for such services.[32]

High-Cost Support

The FCC adopted a bifurcated system for determining the level of universal service support for

telecommunications carriers. For non-rural telecommunications carriers, the level of support would be based on a forward-looking proxy cost model. For rural telephone carriers,[33] the FCC ruled that the level of support be based on embedded costs for three years after large companies begin to use proxy cost models.[34] Rural companies serving Alaska and insular areas would be permitted to employ embedded costs until further review.[35]

Support for Low-Income Consumers

The FCC made three broad categories of changes to the Lifeline and Link Up[36] programs. First, it expanded the Lifeline program to include all states, territories, and commonwealths of the United States; modified the state matching requirement; and increased the amount of federal Lifeline support. Second, the FCC made the contribution to Lifeline and Link Up "equitable and nondiscriminatory"[37] from all providers of interstate telecommunications service and made the distribution of those funds available to all eligible providers.

Third, the FCC ruled that low-income consumers would be provided access to other services and policies. Specifically, the FCC ruled that low-income consumers

would have access to all the same services as those supported in rural, insular, and high cost areas. Additionally, the FCC ruled that Lifeline service would include voluntary toll-limitation/blocking services (to the extent that service providers are capable of providing them) to assist low-income consumers in controlling their toll bills. The FCC also ruled that low-income consumers could not have their local service disconnected for nonpayment of toll charges, because these charges are for different services. Finally, the FCC determined that carriers would be prohibited from requiring service deposits from Lifeline customers who elected toll-blocking services.[38]

Support for Healthcare Providers

The FCC ruled that public and not-for-profit healthcare providers located in rural areas would receive discounts on all telecommunications services up to the bandwidth capacity of 1.544 Megabits (T-1) and subject to a $400 million annual cap. However, the FCC also placed limits on the services that each healthcare provider could obtain. Telecommunications service providers would be required to "charge eligible rural healthcare

providers a rate for each supported service that is no higher than the highest tariffed or publicly available commercial rate for a similar service in the closest city in the state with a population of 50,000 or more people, taking distance charges into account."[39]

The FCC also provided that rural healthcare providers would have access to "limited toll-free access to an Internet service provider (ISP)."[40] To achieve the goals of the Act,[41] the FCC ruled that "each healthcare provider that lacks toll-free access to an ISP may receive the lesser of the toll charges incurred for 30 hours of access to an ISP or $180 per month in toll charge credits for toll charges imposed for connecting to the Internet."[42]

Administration of Support

Section 254(d) of the Act stated that all carriers, i.e., common carrier, as well as non-common carrier and payphone aggregators, that provide interstate telecommunications services must contribute to universal service support mechanisms. The FCC codified § 254(d) into Commission rules and issued a list of examples of interstate telecommunications services.[43]

The FCC's Notice of Proposed Rulemaking and Universal Service Rules— Support for Schools and Libraries

The FCC ruled in its order that all eligible schools and libraries[44] would receive discounts, depending on need, of between 20 and 90 percent on all telecommunications services, Internet access, and internal connections, subject to a $2.25 billion annual cap. In addition, any funds not disbursed in a given year could be carried forward and disbursed in subsequent years without regard to the cap. This provision, according to the FCC, would provide schools and libraries with the maximum flexibility to purchase the services that would meet their communications needs most effectively.[45] The remainder of this section describes in detail the schools and libraries portion of the FCC's rules and includes comments made by issue network members in the proceeding.

Telecommunications Carrier Functionalities and Services Eligible for Support

The FCC ruled that schools and libraries would be able to receive discounts on telecommunications services, Internet access, and internal connections. It was this

portion of the rules that met with the most opposition since it was implemented.

Telecommunications services. As stated above, the FCC defined "core services" as:

- Voice-grade access to the public switched network, with the ability to place and receive calls
- Dual Tone Multifrequency (DTMF) signaling or its functional equivalent (touch-tone)
- Single-party service
- Access to emergency services
- Access to operator services
- Access to interexchange services
- Access to directory assistance.
- Support for toll limitation services (includes both toll blocking and toll control) for low-income consumers.

However, as stated in the Act, the FCC was given the latitude to include additional services for schools and libraries. It could have chosen to provide schools and libraries with discounts on (1) only core telecommunications services; (2) core services plus some complement of additional services; or (3) all telecommunications services (including wireless).

The FCC adopted the third option, that discounts be provided on all telecommunications services.[46] It stated that this guideline would provide schools and libraries the maximum flexibility to purchase whatever package of telecommunications services they believe would meet their

telecommunications service needs most effectively and efficiently.[47]

The FCC rejected recommendations it received during the comment cycle that support be provided only for core services based in its reading of the statute and its legislative history.[48] It concluded that Congress clearly desired to permit schools to have access to and use of services beyond those designated as core services. The FCC cited the Act,[49] stating that in addition to the core services, it may designate additional services for schools.[50] The FCC further explained this recommendation by saying that Congress intended for the FCC and the Joint Board to take into account the special needs of K-12 schools.[51]

The FCC rejected recommendations to include the core services plus some complement of additional services for schools, in part because none of the parties recommended the same set of services. Since the commenting parties themselves could not even agree on an appropriate package of services that should be provided, the FCC decided to allow schools to choose for themselves. Additionally, in a rapidly changing technological environment, the FCC did not want to put itself in the position of having to

conduct frequent rulemaking proceedings to update the list of approved services.[52]

The FCC also rejected the proposal that the use of wireless technologies should be discouraged. The Joint Board had found that "all technologies have their advantages and disadvantages," and concluded that individual schools are in the best position to assess such costs and benefits with respect to their "individual needs and circumstances."[53]

Internet access. The FCC ruled that schools and libraries must be provided discounts for Internet access.[54] The FCC believed that this access would provide schools with the necessary online access to the World Wide Web.[55] It rejected arguments that Internet access be excluded because it is not a telecommunications service.[56] In support of its decision, it cited authority granted in the 199 Act to "designate additional services for support"[57] and section 254(h)(1)(B) authorizes us to fund any section 254(c)(3) services.[58] Further, the FCC stated, "In the education context. . . the statutory references are to the broad class of 'services,' rather than the narrower class of 'telecommunications

services.'"[59] The FCC also noted that the Joint Explanatory Statement stated:

> For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics. . . and information services which can be carried over the Internet.[60]

Intra-school and intra-library connections. The FCC ruled that schools and libraries would receive discounts on charges for intra-school and intra-library connections (i.e., "inside connections").[61] Such discounts, it stated, were permissible under the statutory provisions of the Act[62] and that the legislative history indicated the congressional intent to allow schools and libraries to obtain internal connections at a discount.[63] Specifically, the FCC noted that Congress repeatedly used the term "classroom" in its Joint Explanatory Statement.[64] The FCC interpreted this to mean that Congress intended services to be provided to individual classrooms rather than simply the school house door or even a school computer lab.[65] The FCC also found that Congress specifically recognized inside connections as critical for achieving the purpose of the Act,[66] and thus

considered that schools receive universal service support for internal connections.[67]

The FCC rejected arguments that inside connections were a "physical facilit[y]" rather than a telecommunications "service," and, therefore, not eligible for universal service support.[68] It ruled instead that "the *installation and maintenance* of such facilities are services" and that "the cost of the actual facilities may be relatively small compared to the cost of labor involved in providing internal connections."[69]

Another argument used by the FCC to support universal service funding for internal connections related to the use of *wireless* internal connections,[70] such as NII/SUPERNet.[71] For example, a student or teacher using a wireless telecommunications network would not be able to differentiate between connections between classrooms——"intraschool"——and connections between schools——"interschool." It would follow, then, in the words of the Joint Board,

> "that those wireless services would still represent services if school personnel also used them for communications between classrooms within a school rather than between schools and outside parties. There is nothing on the record or in the statute that would suggest any reason that such services are not eligible for universal service support. Yet if wireless intraschool connections are services eligible

> for a discount and Congress sought to ensure technological neutrality rather than favoring wireless services, it follows that schools purchasing wireline intraschool connections should also be permitted to apply discounts to those services."[72]

The FCC also ruled that "internal connections" be defined broadly to include "such items as routers, hubs, network file servers, and wireless LANs."[73]

Discount Methodology—Matrix[74]

The FCC adopted a matrix of percentage discounts based on a school's or library's level of economic disadvantage and location, with urban areas being low-cost areas and rural areas being high cost (see Table 3.1). Under this plan, the least disadvantaged schools and libraries would receive discounts between 20 and 25 percent on services depending on their location; the most disadvantaged schools and libraries would receive discounts of 90 percent regardless of their location.

The FCC declined to implement a 100-percent discount for any schools or libraries, regardless of economic disadvantage or location. It stated its belief that themaximum 90 percent discount would be sufficient to enable even the most disadvantaged schools to purchase services.[75] The Joint Board had stated in its

TABLE 3.1
Discount Methodology Matrix

How Disadvantaged		Discount Level	
Percentage of Students Eligible for National School Lunch Program	Estimated Percentage of U.S. Schools in Category	Urban Discount	Rural Discount
<1	3	20	25
1-19	31	40	50
20-34	18	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

recommendations that providing support to schools based on a percentage discount mechanism would encourage both efficiency and accountability. First, requiring schools to pay a share of the total cost of service should lead them to avoid unnecessary and wasteful expenditures because they would be unlikely to devote their pre-existing budgeted funds to purchases that they could not use effectively. Second, a percentage discount would encourage schools to seek the best pre-discount price and to make informed knowledgeable choices among their options, thereby building in effective fiscal constraints on the discount fund.[76]

Discounts for economically disadvantaged schools. The FCC ruled that the national school lunch program be used to determine a school's level of economic disadvantage and that discounts should be figured at the school (rather than district) level.[77] It further recommended that schools or districts that do not participate in the national school lunch program or schools that participate in the program but experience a problem with undercounting eligible students (e.g., schools with high transient populations) be permitted to use federally-approved alternative mechanisms laid out in Title I of the Improving America's Schools Act of 1994.[78]

Fund Cap

Based on the fact that this was a new program with no historical record of actual costs, the FCC set an annual cap of $2.25 billion per year on the funds available to schools. Under the FCC rules, any funds not disbursed in a given year could be carried forward and disbursed in subsequent years without regard to the cap. However, from January 1, 1998, through June 30, 1998, the

fund administrator would only collect as much funding as required by demand, with a cap of $1 billion.[79]

The FCC established the funding year to coincide with the calendar year and stated that it would accept requests for support beginning on July 1, 1997, for the following calendar year. If less than the $2.25 billion allocated was spent in CY 1998, then no more than half of the unused portion could be carried forward for use in CY 1999; if the amount allocated in CYs 1998 and 1999 was not spent, no more than half of the unused portion for these two years could be spent in CY 2000.[80]

The FCC directed the fund administrator to collect $100 million per month for the first three months of 1998 and to adjust future contribution assessments quarterly, based on its evaluation of school and library demand for funds (within the restrictions of the funding cap).[81]

Schools and libraries would be required to have secured agreements for their desired services before submitting a request for funding to the administrator. Agreements could be made contingent on receiving funding. The administrator would then commit funds against the cap based on those agreements until any funds carried over from the previous year are exhausted and only $250 million in current year funds remain. In general, funds

would be available on a first-come, first-served basis; however, when expenditures reached $2 billion, indicating funds were running low, the FCC would institute rules of priority giving the highest priority for receiving funds to the most economically disadvantaged schools and libraries that have not yet received discounts that year.[82]

The FCC concluded that these rules would give schools the certainty needed for year-to-year budgeting and avoid the need for the administrator to accumulate, prioritize, and allocate all discounts at the beginning of each funding year. Schools and libraries might be left with a degree of uncertainty about whether they would receive the same level of discount from one year to the next because demand for funds may exceed the funds available. If that occurs, the FCC has stated that it could not

> guarantee discounts in the subsequent year without placing institutions that have not formulated their telecommunications plans in the previous year at a disadvantage, possibly preventing such entities from receiving any universal service support.[83]

Therefore, the FCC ruled that if the administrator estimated that the $2.25 billion cap would be reached for the current funding year, it would recommend to the FCC a reduction in the guaranteed percentage discounts

necessary to permit all expected requests in the next funding year to be fully funded.[84] Further, the FCC would consult with the Joint Board before adopting any changes to the discount matrix.

The priority system would operate as follows. The administrator would ensure that the total level of commitments were made publicly available on the administration web site on at least a weekly basis. If the trigger was reached, the administrator would ensure that a message was posted on the web site, notify the FCC, and take reasonable steps to notify the educational and library communities that commitments for allocating the remaining $250 million of support would be made only to the most disadvantaged eligible schools and libraries for the next 30 days (or the remainder of the funding year, whichever was shorter).[85]

During the 30-day period, applications from schools and libraries would continue to be accepted and processed, but the administrator would only commit funds to schools and libraries that were in the two most-disadvantaged categories on the discount matrix and that did not receive universal service supported discounts in the previous or current funding years. The FCC explained, however, that schools and libraries that "had

received discounts only for basic telephone service in the current or prior year would not be deemed to have received discounts for purposes of the trigger mechanism."[86]

After the initial 30-day period, if uncommitted funds remained, the administrator would process any requests it received during that period from eligible institutions in the two most disadvantaged categories that had previously received funds. If funds still remained after those schools and libraries had received their funding, the administrator would allocate the remaining available funds to schools and libraries in the order that their requests were received until the $250 million was exhausted or the funding year ended.[87]

The FCC established the school and library discount matrix based on the Joint Board's estimate of the level of expenditures that schools and libraries were likely to have; it did not expect that the funding requests would exceed the cap. However, the FCC stated that it would consider whether to revise the cap in its three-year review proceeding.

Interstate and Intrastate Discounts

The FCC ruled that it would "exercise [its] authority to provide federal universal service support to fund intrastate discounts." While the Act[88] permitted states to determine discounts on intrastate services, it did not prohibit the FCC from funding intrastate discounts. In short, the FCC would be providing funding for both interstate as well as intrastate services. The FCC did, however, require states to "establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in that state."[89]

Restrictions Imposed on Schools and Libraries

The FCC placed a number of restrictions on schools and libraries receiving discounts. These restrictions are described in the following two subsections.

Schools and libraries eligible for receiving discounts. The FCC ruled that all schools falling within the definition contained in the Elementary and Secondary

Education Act of 1965 and meeting the criteria of the Act,[90] whether public or private, would be eligible for universal service support.

The FCC adopted the Library Services and Technology Act (LSTA) definition of library, but concluded that a library's eligibility for universal service funding would depend on its funding as an independent entity (i.e., the budget of the library is completely separate from any institution of learning). Because institutions of higher education are not eligible for universal service support, an academic library would be eligible only if its funding was independent of the funding of any institution of higher education. Also, if a library received funding from an elementary or secondary school with an endowment exceeding $50 million, it would not be eligible for universal service support. A library connected to such a school would be eligible only if it was funded independently from the school.

The FCC adopted the independent library requirement because it was concerned that, in some instances where a library received funding from an eligible school, the library could attempt to receive support twice, first as part of the school and second as an independent entity. The FCC ruled that the independence requirement would

ensure that an elementary or secondary school library cannot collect universal service support twice for the same services.

Finally, when Congress amended section 254(h)(4) in September 1996, it added the term "library consortium" to the entities eligible for universal service support.[91] The FCC adopted the definition of library consortium as defined in the LSTA, with one modification; it eliminated "international cooperative association of library entities" from the consortia eligible for universal service support.

Resale of discounted services. The 1996 Act forbade resale by schools and libraries of discounted services:

> Telecommunications services and network capacity provided [to schools or libraries at a discount] may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.[92]

The FCC ruled that all resale would be prohibited (not just resale for profit) as was recommended by the Joint Board.[93]

However, the FCC concurred with commenters that prohibition on resale would not prohibit a school or library from charging fees for any services that it purchased that were not subject to a universal service

discount. For example, a school or library might charge a computer lab fee "to help defray the cost of computers or training fees to help cover the cost of training."[94]

Bona fide requests for service. The Act limited discounts to services provided in response to bona fide requests made for services to be used for educational purposes by schools and libraries.[95] It placed three requirements on schools and libraries.

First, the FCC would require applications to include a technology inventory/assessment. It expected that before placing an order for eligible services, a school or library would review what telecommunications-related facilities it already had or planned to acquire. In addition, schools and libraries would be required to establish specific near-term and long-range plans for using these technologies and for integrating the use of these technologies into their curriculum.[96] Finally, the FCC required independent approval of an applicant's technology plan, ideally by the state agency that regulated schools or libraries, to ensure that the plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program. Plans approved for other purposes, such as

participation in federal or state programs such as Goals 2000 and the Technology Literacy Challenge, would be accepted without need for further independent approval.[97]

Second, the FCC required that the application describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate competitive bids.[98]

Third, the FCC ruled that the request for services be signed by the person authorized to order telecommunications and other supported services for the school or library.

Initiation of Program

The FCC ruled schools and libraries could begin using discounted services on January 1, 1998; applications would be accepted beginning June 1, 1997.[99]

Summary

The events of this second period, which fulfilled two of the requirements of the Administrative Procedure Act of 1946 ("the APA")——information and participation——

were quite routine in comparison to the events of the first period. The FCC was certainly subject to pressure through *ex parte* communications during the rulemaking (in addition to filed comments), but after the order was released, as issue network members sought accountability ——the third requirement of the APA——events became far less routine. In fact, to omit a discussion of the next period, from May 1997 though September 199, would be to omit a discussion of how issue network members demanded accountability from the FCC for its actions.

Notes

[1] Speech by Reed Hundt at the Iowa Distance Learning Association's Third Annual Conference, "Fulfilling the Promise" (March 1, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh610.txt; accessed 16 September 1999. *Emphasis added.*

[2] Speech by Reed Hundt at the Iowa Distance Learning Association's Third Annual Conference, "Fulfilling the Promise" (March 1, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh610.txt; accessed 16 September 1999. *Emphasis added.*

[3] Speech by Reed Hundt at the Iowa Distance Learning Association's Third Annual Conference, "Fulfilling the Promise" (March 1, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh610.txt; accessed 16 September 1999. *Emphasis added.*

[4] Speech by Reed Hundt at the Consortium for School Networking's First Annual Conference, "Fulfilling the Promise of Networking" (March 18, 1996); available from

http://www.fcc.gov/Speeches/Hundt/spreh612.txt; accessed 16 September 1999.

[5] Speech by Reed Hundt at the Children Now Symposium, *Children and the Information Superhighway: Directions for the Future* (September 27, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh638.txt; accessed 17 September 1999.

[6] Ibid.

[7] Statement by Reed Hundt (November 7, 1996); available from http://www.fcc.gov/Speeches/Hundt/st110796.txt; accessed 17 September 1999.

[8] Speech by Reed Hundt to FCC Staff, "Yesterday, Today, and Tomorrow" (May 27, 1997); available from http://www.fcc.gov/Speeches/Hundt/spreh726.html; accessed 17 September 1999.

[9] Department of Education, Office of Education Technology, *Getting America's Students Ready for the 21st Century: Meeting the Technology Literacy Challenge*, (Washington, DC: 1996), 5. This plan was drafted in response to the Improving America's Schools Act, P.L. 103-382.

[10] Department of Education, *Getting America's Students Ready for the 21st Century: Meeting the Technology Literacy Challenge*, July 1996.

[11] The other nine points of the plan were: (1) Set rigorous national standards, with national tests in 4th-grade reading and 8th-grade math to make sure our children master the basics; (2) Make sure there's a talented and dedicated teacher in every classroom; (3) Help every student to read independently and well by the end of the 3rd grade; (4) Expand Head Start and challenge parents to get involved early in their children's learning; (5) Expand school choice and accountability in public education; (6) Make sure our schools are safe, disciplined and drug free, and instill basic American values; (7) Modernize school buildings and help support school construction; (8)Open the doors of college to all who work hard and make the grade,

and make the 13th and 14th years of education as universal as high school; (9) Help adults improve their education and skills by transforming the tangle of federal training programs into a simple skill grant.

[12] Additional information on the hearing is available from http://www.senate.gov/~commerce/hearings/univserv/univserv.htm; accessed 17 September 1999.

[13] Ibid.

[14] American Library Association, *American Library Association Washington Office Newsletter* (*ALAWON*), 6, no. 16 (March 17, 1997); available from http://www.ala.org/washoff/alawon/alwn616.html; accessed 17 September 1999.

[15] Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (March 8, 1996); available from http://www.info-ren.org/universal-service/nprm.html; accessed 17 September 1999.

[16] The Federal-State Joint Board is composed of the Honorable Reed E. Hundt, FCC Chair; the Honorable Rachelle B. Chong, FCC Commissioner; the Honorable Susan Ness, FCC Commissioner; the Honorable Julia Johnson, Commissioner, Florida Public Service Commission; the Honorable Kenneth McClure, Commissioner, Missouri Public Service Commission (resigned in May 1997; replaced by David Baker of the Georgia Public Service Commission); the Honorable Sharon L. Nelson, Chairman, Washington Utilities and Transportation Commission; the Honorable Laska Schoenfelder, Commissioner, South Dakota Public Utilities Commission; and, Ms. Martha S. Hogerty, Public Counsel for the State of Missouri. Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (March 8, 1996).

[17] Speech by Larry Irving, Assistant Secretary for Communications and Information, NTIA, "Equipping Our Children With the Tools to Compete Successfully in the New Economy" to the National Urban League's Conference on Technology and Community Development

New Orleans, LA (August 12, 1996); available from http://www.ntia.doc.gov/ntiahome/speeches/urban081496.htm; accessed 17 September 1999.

[18] The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(46).

[19] The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. § 153(20).

[20] See Federal-State Joint Board on Universal Service, *Recommended Decision*, FCC 96J-3, CC Docket No. 96-45 (November 7, 1996), pars. 448-449; available from http://www.fcc.gov/Bureaus/Common_Carrier/Reports/decision.html; accessed on 17 September 1999.

[21] US Telephone Association Comments in the matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (April 12, 1996), par. II.A; available from http://www.info-ren.org/universal-service/comments/html/233.html; accessed 17 September 1999.

[22] National Cable Television Association (NCTA) Comments in the matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (April 12, 1996), par. VII.A; available from http://www.info-ren.org/universal-service/comments/html/145.html; accessed 17 September 1999.

[23] See, for example, NCTA Comments in the matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*,

FCC 96-93, CC Docket No. 96-45 (March 8, 1996) par. VII.A; available from http://www.info-ren.org/universal-service/comments/html/145.html; accessed 17 September 1999; and Information Technology Industry Council Comments in the matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (March 8, 1996).

[24] Bell Atlantic Reply Comments in the matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, CC Docket No. 96-45 (May 7, 1996), par. 1; available from http://www.info-ren.org/universal-service/comments/html/145.html; accessed 17 September 1999.

[25] The 1996 Act does not specifically define "insular areas," but Congress stated that insular areas would include areas such as the Pacific Island territories. U.S. Congress, Senate, Joint Explanatory Statement, 131.

[26] 47 U.S.C. § 254(b)(1)-(6).

[27] 47 U.S.C. § 254(b)(7).

[28] Federal Communications Commission, *Report and Order on Universal Service*, FCC 97-157, CC Docket No. 96-45 (adopted May 7, 1997; released May 8, 1997), par. 21.

[29] Ibid., par. 22.

[30] Ibid., par. 23.

[31] 47 U.S.C. § 214(e).

[32] *Report and Order*, par. 24.

[33] 47 U.S.C. § 153(37) defines the term "rural telephone company" as a local exchange carrier that (A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau

of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

[34] A forward-looking cost proxy model calculates the cost of the network based on an ideal, efficient network rather than on embedded costs, the traditional manner in which universal service support has been calculated.

[35] *Report and Order*, par. 26.

[36] Link-Up America, initiated in 1987 and modified in 1989, provided federal assistance to low-income households for connecting their phones to the network. Currently, 49 states and the District of Columbia participate in Link Up; California has opted to provide its own connection assistance program.

[37] *Report and Order*, par. 27.

[38] Ibid., par. 28.

[39] Ibid., par. 35.

[40] Ibid., par. 36.

[41] 47 U.S.C. § 254(h)(2)(A).

[42] *Report and Order*, par. 36. Telecommunications service providers may treat the amount eligible for support as an offset against their annual universal service obligation and receive reimbursement for any amount above what is due. Non-telecommunications service providers providing supported services would receive direct reimbursement for the eligible amount. *Report and Order*, par. 37.

[43] *Report and Order*, pars. 39-42.

[44] A school or library is eligible for the universal service program as long as it (1) does not operate as a for-profit business; (2) is a elementary or secondary school defined in paragraphs (14) and (25), respectively,

of § 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and does not have an endowment of greater than $50 million; or (3) is a library eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c et seq.).

[45] *Report and Order*, pars. 29-34.

[46] *See* 47 U.S.C. § 254(h)(1)(B) and 47 U.S.C. § 254(h)(2)(A).

[47] *Report and Order*, par. 428.

[48] Ibid., pars. 426-427.

[49] 47 U.S.C. § 254(c)(3).

[50] *Report and Order*, par. 427.

[51] *Report and Order*, par. 427, citing U.S. Congress, Senate, Joint Explanatory Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 1996, 133.

[52] *Report and Order*, pars. 431-432.

[53] Ibid., pars. 436-437.

[54] *See* 47 U.S.C. § 254(h)(2)(A).

[55] *Report and Order*, par. 463.

[56] Ibid., pars 437-448.

[57] *Report and Order*, par. 437, citing 47 U.S.C. § 254(c)(3).

[58] Ibid, citing 47 U.S.C. § 254(h)(1)(B).

[59] *Report and Order*, par. 437.

[60] *Report and Order*, par. 442, citing U.S. Congress, Senate, Joint Explanatory Statement, 133.

[61] Inside connections are that portion of the total telecommunications connection that exists between the schoolhouse door and the customer's equipment, such as a

telephone or a computer. It may consist of a wire or wireless connection.

[62] 47 U.S.C. § 254(h).

[63] *Report and Order*, par. 450.

[64] Ibid.

[65] Ibid., par. 455.

[66] 47 U.S.C. § 254.

[67] *Report and Order*, pars. 425 and 450-457.

[68] Ibid., pars. 425 and 452.

[69] Ibid., pars. 451-452.

[70] Ibid., pars. 451-452.

[71] In 1996, the FCC proposed making available 350 megahertz of spectrum at 5.15 - 5.35 GHz and 5.725 - 5.875 GHz for use by a new category of unlicensed equipment called NII/SUPERNet devices. NII/SUPERNet devices would provide short-range, high-speed wireless digital information transfer and could support the creation of new wireless local area networks (LANs) as well as facilitate access to the National Information Infrastructure without the expense of wiring. These devices may further the universal service goals of the Telecommunications Act by offering schools, libraries, health care providers, and other users inexpensive networking alternatives that may access advanced telecommunications services. To further promote technical and operational flexibility, the Commission has proposed to regulate NII/SUPERNet devices under Part 15 of the FCC rules. Unlicensed Part 15 status would facilitate spectrum reuse and provide protection to incumbent and proposed primary operations., Unlicensed NII/SUPERNet Operations in the 5GHz Frequency Range. Federal Communications Commission, Office of Engineering and Technology, Notice of Proposed Rulemaking, *Amendment of the Commission's Rules to Provide for Unlicensed NII/SUPERNet Operations in the 5 GHz Frequency Range*, FCC 96-193, ET Docket No. 96-102, (Adopted: April 25, 1996; Released: May 6, 1996).

[72] Federal Communications Commission, *Recommended Decision of the Federal-State Joint Board on Universal Service*, FCC 96-93, CC Docket No. 96-45 (adopted November 7, 1996; released November 8, 1996), par. 482; available from http://www.fcc.gov/Bureaus/Common_Carrier/Reports/decision.html; accessed on 17 September 1999. *See also*, *Report and Order*, par. 457.

[73] *Report and Order*, par. 460.

[74] Other topics in addition to the discount matrix were discussed in the Discount Methodology section of the Order, including prediscount price of services, competitive environment, identification of the lowest price charged to similarly situated non-residential customers for similar services, and identification high price areas. These issues are not summarized here because they were non-contentious and not necessary to understanding the remainder of the dissertation.

[75] *Report and Order*, par. 497.

[76] *Recommended Decision*, par. 549.

[77] *Report and Order*, par. 509.

[78] 34 C.F.R. § 200.28(a)(2)(I)(B). However, the FCC noted in its Report and Order that existing sources of alternative information, such as Aid for Families with Dependent Children, would be altered significantly by the recently enacted welfare reform law. *See* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

[79] *Report and Order*, par. 529.

[80] Ibid.

[81] Ibid., par. 532.

[82] Ibid., pars. 535 and 539.

[83] Ibid., par. 537.

[84] Ibid., par. 538.

[85] *Report and Order*, par. 540.

[86] Ibid.

[87] Ibid.

[88] 47 U.S.C. § 254(h)(1)(B).

[89] *Report and Order*, par. 550.

[90] 47 U.S.C. § 254(h).

[91] *See* 47 U.S.C. § 254(h)(4) and note 92.

[92] 47 U.S.C. § 254(h)(3).

[93] *Report and Order*, par. 566.

[94] Ibid., par. 567.

[95] 47 U.S.C. § 254(h)(1)(B).

[96] *Report and Order*, par. 573.

[97] Ibid., par. 574.

[98] Ibid., par. 575.

[99] Ibid., pars. 606-607.

CHAPTER 4
THE STATUS OF THE SCHOOLS AND LIBRARIES PROGRAM, A POSTSCRIPT AND SUMMARY: JUNE 1997 THROUGH JULY 1999

The schools and libraries program—commonly called the "E-Rate" or "E-Rate Program"—met with opposition soon after the Federal Communications Commission (FCC or "Commission") adopted its final rules. As described below, the telecommunications industry launched legal challenges to the program almost immediately after the rules were issued, and Congress stepped in with legislation to terminate or alter a program that opponents called an illegal tax in both 1998 and 1999.

The outlook for the program's survival was bleak during most of 1998. That year, the FCC significantly changed the program's structure and drastically reduced its funding in response to political pressure. However, in spite of continued attacks, by the autumn of 1999, it was clear that the schools and libraries program would continue.

This chapter is a "postscript" to the events presented in the previous two chapters. As such, it provides highlights of the activities that took place

from June 1997, soon after the FCC issued its rules, through August 1999.

The chapter focuses on the issue environment—the political environment—that evolved during this period and describes representative events to illustrate that evolution. In general, milestones in program implementation are noted only if they were the result of or the cause of the issue environment, although some are noted to illustrate the status of the program at a particular time.

The remainder of this chapter is divided into four sections. Three describe the events of 1997, 1998, and 1999. The chapter ends with a summary of the activities of this period.

June to December 1997

Unlike the previous two periods, in which the Clinton Administration took the lead in promoting the E-Rate Program as it was being developed, industry now took the lead in challenging the program. In fact, soon after the rules were issued, industry brought three significant legal challenges that were eventually consolidated as *Texas Office of Public Utility Counsel, et. al.* v. *FCC*.[1]

Other Issue Network Activity

In August 1997, the FCC took its first step toward implementing its May order by creating the Schools and Libraries Corporation (SLC) to administer the E-Rate Program. The SLC board of directors began meeting and in October created an initial filing window of 75 days, to begin January 1, 1998, within which all applications would be treated equally (i.e., as if they had all arrived on the same day). The SLC also began work on its web site, where schools and libraries would apply for funds.

In spite of the court challenges stated above, the FCC and the Administration continued speaking out in support of the E-Rate. FCC Chairman Reed Hundt gave one speech in which the program was a major topic[2] (and others in which he mentioned it in passing), testified on Capitol Hill in support of the E-Rate,[3] and included it in his 1997 FCC Agenda.[4] The President and Vice President also spoke out in support of the program, with each giving a speech in the last half of the year in which they expressed support for the E-Rate.[5] The Administration also continued introducing programs aimed at increasing children's access to technology. For

example, in October, it unveiled Starbright World, an online computer network that allowed seriously ill children "to meet, play and verbally communicate with one another."[6] From their actions, it was clear that Clinton, Gore, and Hundt would continue championing the program even in the face of serious opposition.

In December, long-distance companies AT&T and MCI announced that they would begin including a line item charge to recover their contributions to the universal service program. Business customer bills would include the charge in early 1998 and residential bills would include the charge beginning in June 1998.[7] While not a direct attack on the E-Rate, *per se*, that was the effect because, in raising customers bills, these companies allowed opponents to blame the FCC for the rate hikes. In fact, later that month, bowing the pressure brought to bear in response to AT&T and MCI's decision, the Commission reduced industry contributions for the first half of 1998 from $1 billion to $625 million.[8]

The public interest community was very unhappy with both the FCC's decision to reduce program funding and with industry for trying to stop the program before it began. The American Library Associaiotn (ALA), for one, was active in opposing the local telephone companies'

lawsuit against the FCC and also encouraged readers of its *ALA Washington Office Newsletter* (*ALAWON*) to contact the local and long distance telephone companies and the FCC to state their opposition to the lawsuits and cuts in funding.

The Benton Foundation continued its support for the E-Rate in a number of ways. For example, also in December, Andrew Blau, then the Director of Communications Policy and Practice at Benton, wrote an article called, "The Boy Who Cried 'Tax'." In that piece, a response to a *Washington Post* editorial by James Glassman against the E-Rate,[9] Blau asserted that not only was the E-Rate Program not a tax, but that industry had agreed to it as part of its lobbying before the 1996 Act was signed. Now, he claimed, those companies were reneging on that agreement.[10]

Summary

When the FCC issued its universal service rules in May 1997, the public interest community and government turned to assisting schools, libraries, and state governments in implementing the E-Rate Program. Industry, however, began making legal and, through the

fees they began charging customers, procedural challenges to the program. Although the legal challenges and positioning by the local and long distance industries must have been disappointing to E-Rate supporters, the following year would be even worse—it was the low point for optimism concerning the outlook for the program.

1998

While 1997 belonged to the telecommunications industry, 1998 definitely belonged to Congress. Spurred on by the momentum built against the E-Rate during 1997 by industry and carried over into 1998 with additional support from conservative groups, the 105th Congress began taking action to terminate or alter the E-Rate Program. Over the course of the year, groups such as the National Taxpayers Union and others gained prominence in the network by helping Republicans in Congress popularize the term "Gore Tax" as an alternative name for the E-Rate.

May and June were particularly contentious months for the E-Rate and universal service in general, and led to many significant developments, including:

- The FCC submitted its *Report to Congress on Universal Service*, in which it proposed to eliminate the SLC as a stand-alone entity and fold it into the larger Universal Service Adminstrative Company (USAC) (May 1998).[11]

- The Senate held its FCC Common Carrier Oversight Hearing, at which rural Senators criticized the FCC's handling of universal service reform (May 1998).

- The long-distance companies began putting a universal service line item on residential bills (June 1998).

- Senator John McCain (R-AZ), Chairman of the Senate Commerce Committee, wrote a letter to FCC Chairman Kennard critical of the Commission's handling of universal service issues (June 1998).

- The House introduced two bills to terminate the E-Rate Program (June 1998).[12]

Congressional Hearings

In addition to the hearings in June and July, both the House and Senate held other hearings during the session to examine how the FCC and SLC were implementing the E-Rate. Three, described below, were particularly contentious.

March 31, 1998. The House Subcommittee on Telecommunications, Trade, and Consumer Protection, chaired by Rep. Billy Tauzin (R-LA), held its annual

hearing on FCC reauthorization. The bulk of the lengthy hearing was dedicated to testimony from two panels of witnesses—the FCC Commissioners making up the first panel and Ira Fishman, CEO of the SLC, and Robert Murphy, General Counsel of the General Accounting Office (GAO) making up the second. A number of legislators made opening statements, very few of which were favorable towards the E-Rate Program. For example:

- Rep. John Dingell (D-MI) called the SLC a "bloated bureaucracy" and the E-Rate program itself "an extravagant entitlement program."[13]

- Rep. Christopher Cox (R-CA) described the program as a $2.5 billion dollar "tax" that was "sucking the Internet into the vast web of the Federal *Computer* Commission." (*Emphasis added.*)[14]

- Rep. Thomas Bliley (R-VA) said he had wanted to delay the entire program—which he called a "virtual Titanic"—and that the FCC had misinterpreted the intent of Congress.[15]

- Rep. Michael Oxley (R-OH) questioned the size of the E-Rate fund and the inclusion of inside wiring for discounts.[16]

For the second panel, Mr. Murphy had been called as a witness because the GAO had just released a report critical of the authority of the FCC to establish the SLC.[17] Many legislators, who had long held that the FCC had overstepped its bounds and misinterpreted the meaning of the schools and libraries provisions of the Act, welcomed the report. Those legislators believed that by

establishing a separate corporation to run the program and by allowing funds to be used to pay for Internet services and internal connections—as opposed to paying only for telecommunications services—the FCC had acted outside its authority.[18]

July 16, 1998. The Senate Committee on Commerce, Science, and Transportation, held another hearing on the Schools and Libraries Program. Again, Mr. Fishman and another GAO representative, Judy Englund-Joseph, testified and, again, the Members were critical of the E-Rate program.[19]

August 4, 1998. The House Ways and Means Oversight Subcommittee held yet another hearing on August 4.[20] The focus of that hearing was "to examine the funding mechanisms of the E-Rate program as implemented by the FCC and the SLC to determine the extent to which it involved a revenue or tax matter and whether the program was properly authorized."[21] Witnesses included Representatives Jerry Weller (R-IL), Representative Tauzin, Representative Earl Blumenauer (D-OR), FCC Commissioner Harold Furchtgott-Roth, and Christopher Wright, FCC General Counsel. Representative Weller

summed up the opposition to the E-Rate by saying that the FCC had taken:

> [The] unauthorized action to create a new, ineffective bureaucracy that has yet to provide any funding to 1800 schools in Illinois that have applied for help in connecting their students to the Internet, and
>
> The unconstitutional action of imposing an unauthorized tax on long distance users in order to cover the expense of this unworkable enterprise.[22]

Representative Blumenaur's comments, along with those of Christopher Wright, represented those who supported the E-Rate. In his testimony, Rep. Blumenauer stated, in part:

> Long distance phone bills are now at their lowest point in history. AT&T has just agreed to merge with TCI at a cost of $48 billion. GTE and Bell Atlantic are seeking to spend $52 billion on their recently announced merger. The telecommunications industry has saved billions in costs as a result of telecommunications reform to date. Yet controversy has erupted over one element the so-called E-Rate, which would represent less than 1 cent-per-day-per-customer line to provide Internet access for Americas schools and libraries.[23]

Congressional Legislation

In addition to the hearings described above, Congress also introduced four bills aimed at terminating or altering the E-Rate. Ultimately, however, after

months of attempts by Congressional sponsors and counter-lobbying by public interest groups and government supporters, none of these bills came up for a vote. These bills are listed in Table 4-1 along with brief descriptions of their contents.

Other Issue Network Activity

After being delayed a month by technical difficulties, the SLC web site began accepting applications on January 30, 1998. During the initial 75-day application phase that ended April 15, 1998, the site received more than 32,600 applications seeking about $2 billion in discounts. In addition to the congressional opposition outlined above, the SLC was plagued by operational problems. For example, three months after the end of the application window, only about 62 percent of applications had been processed and entered into the SLC's database.[24]

Public interest groups, still anxious over the cuts to the program at the end of the previous year began rallying their members to support the E-Rate. The ALA, for example, urged its members in a February *ALAWON* to contact Congress and the FCC to tell them not to cut

Table 4-1
E-Rate Termination Bills—105th Congress

Title of Bill End of Session Status	**Bill Number**, Date Sponsor *# of Co-Sponsor(s)*	**Main Points of Bill**
Anti-FCC Phone Tax Act Referred to the Committee on Commerce (then to the Subcommittee on Telecommunications, Trade, and Consumer Protection) - no vote.	**H.R. 4032**, June 10 Sensenbrenner (R-WI) *7 co-sponsors*	• Delete several subsections of § 254 dealing with the schools and libraries program.
E-Rate Tax Moratorium Act Referred to the Committee on Commerce (then to the Subcommittee on Telecommunications, Trade, and Consumer Protection) - no vote.	**H.R. 4065**, June 16 Scarborough (R-FL) *34 co-sponsors*	• End universal service funding for the e-rate.
Schools and Libraries Internet Access Act Senate: Read twice and referred to the Committee on Commerce - no vote. House: Referred to the Committee on Commerce the Committee on Ways and Means - no vote.	**S. 2348**, July 23 Burns (R-MT) 1 co-sponsor **H.R. 4324**, July 23 Tauzin (R-LA) *10 co-sponsors*	• Program would be transferred from the SLC to the National Telecommunications and Information Administration. • Funding, set at $1.7 billion per year, would come out of the already-existing telephone excise tax. • Money would be distributed as block grants to the states.

program funding or change eligible services and to "keep the program moving forward and protect this as well as the entire universal service program."[25] Their efforts, along with those of other education-related groups such as EdLiNC, continued throughout the year.

However, in June, as it had the previous December, the FCC responded to congressional pressure and, in its *Fifth Order on Reconsideration and Fourth Report and Order*,[26] again cut the amount of funding for the E-Rate.

Now, for the first funding year, the SLC would collect and disperse no more than $325 million per quarter for the third and fourth quarters of 1998 and the first and second quarters of 1999. Further, the Commission adopted rules of priority that would allow all eligible schools and libraries to receive full support for telecommunications services and Internet access, but only ensure that the neediest applicants would receive support for internal connections.[27]

While the FCC bowed to much of the congressional pressure exerted on it during late 1997 and 1998, the Administration, namely President Clinton, Vice President Gore, and Education Secretary Riley, remained resolute in supporting the program.[28] Further, the two main sponsors of the original legislative language, Senators Olympia Snowe (R-ME) and Jay Rockefeller (D-WV), also expressed concern over funding cuts.[29]

One unexpected development during this period was the emergence of conservative "think tanks" in the issue network. They had remained largely out of the network until 1998 when they unleashed a series of events (e.g., conferences), newspaper articles and editorials, policy papers, and web sites dedicated to stirring up opposition to the E-Rate, or what these groups dubbed the "Gore

Tax." For example, the Cato Institute published a policy paper, "Universal Service: The New Telecommunications Entitlements and Taxes,"[30] deriding the expanding universal service program. Moreover, at the 1998 Policy Conference hosted by the Association for Computing Machinery, Cato Institute Vice President David Boaz called for an end to the program he believed to be "probably unconstitutional" as well as patronizing to poor schools, which he believed should be allowed to spend money (presumably in the form of block grants) as they saw fit.[31]

Other anti-E-Rate activities also took place. The National Taxpayers Union (NTU), launched a web site, WWW.GORETAX.COM, with the opening banner, "The Hidden Tax in Your Telephone Bill: Unmasking the E-Rate." In the site, NTU provided visitors with information such as who the key players in the program were, how to contact one's elected officials to encourage them to end the program, and what the program cost. Rush Limbaugh criticized the Gore Tax on his radio show.[32] Finally, there was at least one very bizarre web site, "Use of the FCC: The Illegal Gore Tax." The site claimed the E-Rate was aimed at getting more "Nazizens" (as opposed to the well-known term "netizens") online and indoctrinating children in

the "inherent sex-oriented (homosexual and, since being marketed toward youth, pederist [sic])" Internet.[33]

In spite of the political turmoil surrounding the program all year, the SLC pressed forward with E-Rate implementation. In November, it was able to send commitment letters to recipients and announced that over the next two months, up to 40,000 public schools and 7,000 libraries would receive nearly $2 billion.[34]

Summary

Although 1998 ended with the E-Rate intact, its funding had been significantly reduced and its opponents had successfully labeled it a tax—the "Gore Tax" and an *illegal* tax at that. Further, opponents seemed only to be gaining momentum, not losing it, even though legislation to terminate or alter the E-Rate had failed. Certainly, opponents had grabbed the advantage in public discourse, painting Vice President Al Gore's pet project as not only a tax, but also as a project born of political rather than altruistic motivations.

January to September 1999

Members of the 106th Congress set on ending the E-Rate as a campaign vehicle for Vice President Gore certainly had a lot of vocal public opinion on their side. However, they definitely did not interpret their inability to pass legislation on the E-Rate in the previous session as a signal to accept the program. Instead, opposition in both the House and Senate began offering new versions of the previous session's anti-E-Rate efforts, most notably the Tauzin-Burns proposals (see Table 4-2).

Again, Tauzin and Burns stated that they supported providing federal assistance to schools and libraries to connect to the Internet, but that it should be funded differently.[35] Specifically, they believed that it should not be funded by a "tax" on telephone users and it should not be a program administered through the FCC. Identical to the previous year's bills, the Tauzin-Burns proposals would have transferred E-Rate administration to either the Department of Education (House version) or the National Telecommunications and Information Administration (NTIA) (Senate version), and funds would have been allocated as block grants to the states. Both

Table 4-2
E-Rate Termination Bills—106th Congress

Title of Bill **End of Session Status**	**Bill Number**, Date Sponsor *# of Co-sponsor(s)*	Main Points of Bill
E-Rate Termination Act Referred to the Subcommittee on Telecommunications, Trade, and Consumer Protection - no vote.	**HR 692**, Feb. 10 Tancredo (R-CO) *35 co-sponsors*	• Delete the schools and libraries sections from the § 254 of the 1996 Telecommunications Act.
Telecom. Trust Act Referred to the Committee on Commerce (then to the Subcommittee on Telecommunications, Trade, and Consumer Protection) and the Committee on Ways and Means - no vote.	**HR 727**, Feb. 11 Klink (D-PA) *5 co-sponsors*	• Fund the E-Rate through the already-existing telephone excise tax.
Schools and Libraries Internet Access Act House: Referred to the Committee on Commerce (then to the Subcommittee on Telecommunications, Trade, and Consumer Protection) and the Committee on Ways and Means - no vote. Senate: Read twice and referred to the Committee on Finance - no vote.	**HR 1746**, May 11 Tauzin (R-LA) *20 co-sponsors* **S 1004**, May 11 Burns (R-MT) *1 co-sponsor*	• Strike the E-Rate language from § 254. • Reduce the existing excise tax on phones from 3% to 1% for five years, and after five years, eliminates the tax altogether. • Create fund with the telephone excise tax. • Department of Education will administer the program • Provide block grants to state departments of education.

bills would have terminated the E-Rate as it was funded under Section 254 of the Telecommunications Act, instead funding it for five years through the already-existing telephone excise tax at about $1.9 billion per year for five years, after which the program would be terminated altogether.

Rep. Tauzin, in a press release, framed his bill as the only way to save the E-Rate, not as an attempt to kill it:

> In a nutshell, what we're doing is cutting taxes for nearly everyone in America and providing a stable source of funding for the E-rate program in the process. . . In my opinion, the so-called 'Gore Tax' on telephone bills which funds the current program is not constitutional. If critics successfully challenge this program in court, there will be no money, not a single penny, available for Internet services for schools and libraries. This bill guarantees funding for these vitally important educational services.[36]

Another proponent of the bill, Rep. Weller, stated:

> Only Congress can levy taxes. Currently the FCC's tax to finance this important program is being challenged in court. We need to replace this illegal FCC tax and pass a legal and reasonable funding solution to keep this program working. There is no reason to create or sustain the FCC's new tax.[37]

Sen. Conrad Burns (R-MT), the sponsor of the Senate version of the bill, also stated his belief that his effort was the best way to get schools hooked to the Internet:

> [This] program is extremely important for schools that cannot afford the initial costs of connecting to the Internet, which has become an invaluable educational tool. I want to see this program reach its full potential for success, and the best way to do that is provide a stable structure that is not the subject to the FCC's whims.

> This bill ensures the continued viability of the Schools and Libraries program by tying it to a specific, predictable funding mechanism. The bill also makes sure that universal service is saved for its original objective—providing affordable telephone service for folks in rural areas.[38]

Ultimately, as in the previous session of Congress, none of the bills introduced came up for a vote in their respective committees or subcommittees.

Other Issue Network Activity

Although Congress spent the most time of any of the issue network members debating the E-Rate in public, a court, in a single decision, issued the most important statement about the E-Rate during 1999. On July 30, the U.S. Court of Appeals for the Fifth Circuit issued its decision on *Texas Office of Public Utility Counsel vs. FCC*,[39] finding that the E-Rate was not an unconstitutional tax. Further, it held that the FCC had not overstepped its authority by including Internet access and internal connection in the discount program. Among its other findings, the Court held that:

- The FCC had the authority to permit non-telecommunications companies to receive payments out of the universal service fund if they provided services eligible for discounts.

- The FCC was within its bounds to make "all commercially available services" eligible for discounts.

- The FCC was not allowed to include intrastate revenue for calculating a carrier's contributions.[40]

This victory for E-Rate advocates, paired with the success stories that were being told about the 1998 E-Rate cycle, put opponents on the defensive. For example, while critical press was still appearing, favorable press was beginning to turn the tide of public opinion.[41] For example, in March, *CNET News*, an online news service covering computer and Internet issues, wrote, "E-rate wins praise for 1998."[42] The article cited a Department of Education survey that found the number of schools connected to the Internet had jumped from 3 percent and 27 percent in 1994 and 1997, respectively, to more than 50 percent in 1998. The article went on to say:

> The Department found that smaller and economically disadvantaged schools were now just as likely to have Internet connections as larger, wealthier schools. The survey also found 80 percent of the poorest schools have [Internet] connections as of 1998, compared to 87 percent of the wealthiest schools.[43]
>
> The e-rate is being credited in large part for the boost in Net access at schools. Fifty four percent of the 1998-99 e-rate funds—$897 million—went to internal wiring costs for the nation's poorest schools.

Then, in August the *New York Times* published an article that would have been impossible a year earlier: "Phone Fee for School Internet Service Seems to Be Too Popular to Overturn."[44] In the article, the author stated, "the program, officially called the E-rate, has proved to be so popular that even the harshest critics now agree that further complaints are futile." Unlike the *CNET News* author who cited the program's success as the main reason for its popularity, the *Times* author quoted a lobbyist who had worked against the program as saying, "Once you have large sums of money pouring into every school district in the country, it's impossible to turn off the spigot." He quoted another opponent of the program from the Heritage Foundation, who agreed there was no turning back because

> [p]ork barrel has won out, no doubt about it. . .. This technology has such appeal, if you're against this, you're viewed as being against children. The political dynamic at play here is very powerful.[45]

In short, stated the author, the reason for the program's success was "pork barrel trump[ing] political, ideological and commercial concerns." Another way of looking at the situation, of course, was that public opinion had solidified in favor of the E-Rate Program and formed a "wall" against attacks from opponents.

Summary

The apparent fate of the E-Rate changed each year after the FCC announced its rules. Opponents appeared to have been successful during 1998 and into 1999 in dubbing the program an illegal tax, and they were poised to dismantle the program. Even when public opinion supported the program, however, instead of accepting defeat, opponents relabeled it as "pork."

How did a program successfully labeled an illegal tax by its opponents become so popular? How had it even survived? What forces had come to bear to achieve this turnaround? These questions are addressed in the following chapter.

Notes

[1] Texas Office of Public Utility Counsel, et al. v. FCC, No. 97-60421 (5th Cir., 1999); available from http://www.ca5.uscourts.gov/opinions/pub/97/97-60421-cv0.htm; accessed 22 September 1999. SBC alleged that the E-Rate program constituted an illegal new tax. BellSouth alleged that providing discounts for Internet access and internal connections was not legal under the 1996 Telecommunications Act—it also opposed the ability of libraries and schools to receive discounts on services provided by "alternative" providers, such as wireless and cable services. GTE claimed that E-Rate funds could only be spent on telecommunications services.

[2] Speech by Reed Hundt, Federal Communications Commission (FCC) Chairman, at the Project Tell Celebration, The City

University of New York (June 17, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh733.html; accessed 22 September 1999.

[3] Statement by Reed Hundt on Universal Service, before the U.S. Senate, Committee on Commerce, Science and Transportation (March 12, 1996); available from http://www.fcc.gov/Speeches/Hundt/spreh714.html; accessed 22 September 1999.

[4] Speech by Reed Hundt, "The Hard Road Ahead—An Agenda for the FCC in 1997" (December 26, 1996); available from http://www.fcc.gov/Speeches/Hundt/97agenda.txt; accessed 22 September 1999.

[5] Remarks by President William J. Clinton to Elementary School Principals Association (July 25, 1997), and Remarks by Vice President Al Gore at the Science and Math Awards (June 11, 1997).

[6] White House Press Release, "Networks for People: Clinton-Gore and the Information Superhighway," October 30, 1997.

[7] *See* AT&T Press Release, "AT&T outlines universal service cost recovery plans," December 18, 1997; available at http://www.att.com/press/1297/971218.chb.html; accessed 22 September 1999, and American Library Association, *Washington Office Newsletter (ALAWON)*, 6, no. 114 (December 17, 1997); available from http://www.ala.org/washoff/alawon/alwn6114.html; accessed 22 September 1999. No MCI press release on this topic could be located.

[8] Federal Communications Commission (FCC), *In the Matter of Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45 and CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, and FCC, *Fourth Order on Reconsideration,* CC Docket No. 96-45, *Report and Order*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72 (adopted December 30, 1997, released December 30, 1997). *See also* FCC News Release, Report

No. CC 97-61, *Common Carrier Action*, December 30, 1997, "Commission Addresses Universal Services Issues Raised by Petitioners," CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72.

[9] James Glassman, "A New Tax for the New Year," *Washington Post* Op-Ed, December 2, 1996.

[10] CITE Blau piece from Benton. Also, email Andrew about this as well as the issue in FN 14, below.

[11] FCC, *Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579* (generally referred to as the *Report to Congress on Universal Service*), FCC 98-85 (May 8, 1998); available from http://www.fcc.gov/ccb/universal_service/report.html; accessed 22 September 1999.

[12] Congress introduced a total of 4 bills during the entire session.

[13] American Library Association, *ALAWON*, 7, no. 39 (April 8, 1998); available from http://www.ala.org/washoff/alawon/alwn739.html. *See also*, David W. Carney, "Congressmen Decry the "Federal Computer Commission," *Tech Law Journal* (March 31, 1998); available from http://www.techlawjournal.com/telecom/80331fcc.htm; accessed 22 September 1999.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] U.S. General Accounting Office, *Telecommunications: FCC Lacked Authority to Create Corporations to Administer Universal Service Programs*, GAO/T-RCED/OGC-98-84, 31 March 1998. *See also* David W. Carney, "GAO Report: FCC Illegally Formed Schools and Libraries Corporation," *Tech Law Journal* (March 31, 1998); available from http://www.techlawjournal.com/telecom/80331gao.htm; accessed 22 September 1999.

[18] David W. Carney, "GAO Report: FCC Illegally Formed Schools and Libraries Corporation," *Tech Law Journal* (March 31, 1998); available from http://www.techlawjournal.com/telecom/80331gao.htm; accessed 22 September 1999.

[19] David W. Carney, "Senate Committee Holds Hearing on Schools and Libraries Corporation," *Tech Law Journal* (July 20, 1998); available from http://www.techlawjournal.com/telecom/80720slc.htm; accessed 22 September 1999, and American Library Association, *ALAWON*, 7, no. 84 (July 17, 1998); available from http://www.ala.org/washoff/alawon/alwn7084.html; accessed 22 September 1999.

[20] For two excellent summaries of this hearing, *see* American Library Association, *ALAWON*, 7, no. 92 (July 17, 1998); available from http://www.ala.org/washoff/alawon/alwn7092.html; accessed 22 September 1999, and David W. Carney, "House Subcommittee Debates E-Rate Funding," *Tech Law Journal* (August 5, 1998); available from http://www.techlawjournal.com/telecom/80720slc.htm; accessed 22 September 1999.

[21] U.S. Congress, House of Representatives, "Johnson Announces Hearing on the Funding Mechanisms of the 'E-Rate' Program," Advisory from the Committee on Ways and Means, Subcommittee on Oversight, 24 July 1998. *See also* American Library Association, *ALAWON*, 7, no. 92 (August 7, 1998); available from http://www.ala.org/washoff/alawon/alwn7092.html; accessed 22 September 1999, and David W. Carney, "House Subcommittee Debates E-Rate Funding," *Tech Law Journal* (August 5, 1998); available from http://www.techlawjournal.com/educ/19980805.htm; accessed 22 September 1999.

[22] Statement by Rep. Jerry Weller in testimony before the Subcommittee on Oversight of the House Committee on Ways and Means Hearing on the Funding Mechanisms of the "E-Rate" Program, August 4, 1998. Available from http://www.house.gov/ways_means/oversite/testmony/8-4-98/8-4well.htm; accessed 22 September 1999.

[23] Statement by Rep. Earl Blumenauer in testimony before the Subcommittee on Oversight of the House Committee on Ways and Means Hearing on the Funding Mechanisms of the "E-Rate" Program, August 4, 1998. Available from http://www.house.gov/ways_means/oversite/testmony/8-4-98/8-4blum.htm; accessed 22 September 1999.

[24] Testimony of Judy A. Englund-Joseph before the U.S. Senate, Committee on Commerce, Science, and Transportation, July 16, 1998. *See also*, American Library Association, *ALAWON*, 7, no. 84 (July 17, 1998); available from http://www.ala.org/washoff/alawon/alwn7084.html; accessed 22 September 1999.

[25] American Library Association, *ALAWON*, 7, no. 20 (February 27, 1998); available from http://www.ala.org/washoff/alawon/alwn7020.html; accessed 22 September 1999.

[26] FCC, *In the Matter of Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order*, CC Docket No. 96-45 (adopted June 12, 1998, released June 22, 1998).

[27] Ibid. *See also*, FCC Common Carrier Bureau, News Release, "FCC Reforms Universal Service Support Mechanism for Schools and Libraries," CC Docket No. 96-45, Report No. CC 98-17 (June 12, 1998).

[28] *See* Department of Education, Press Release, "Gore Lauds Continued Progress in Connecting to the Internet, Urges More Access for Poor Schools and Remote Classrooms," February 26, 1998; President William J. Clinton, Remarks at a DCCC Dinner, May 3, 1998; President William J. Clinton, Remarks at a DSCC Dinner in Chicago, May 4, 1998; Education Secretary Richard Riley, Statement in Opposition to Reducing E-Rate Funding, June 4, 1998; President William J. Clinton, Remarks at MIT Commencement, June 5, 1998; President William J. Clinton, Remarks at Portland State University Commencement, June 13, 1998; President William J. Clinton, Remarks at a DCCC Dinner, July 9, 1998; Vice President Al Gore at the NAACP Annual Convention, July 16, 1998; President William J. Clinton, Remarks at Girls Nation Event, July 17, 1998;

President William J. Clinton, Remarks at the American Federation of Teachers Meeting, July 20, 1998; President William J. Clinton, Remarks to the Education International World Congress, July 29, 1998; President William J. Clinton, Remarks at the Unity Event, August 10, 1998; President William J. Clinton, Remarks on Safe Schools and Communities , August 27, 1998; Education Secretary Riley, Statement on Release of Education Week's Technology Counts '98 Report, September 29, 1998; and President William J. Clinton, Remarks at Forest Knolls Elementary, October 13, 1998.

[29] *See* Transcript of Senator Rockefeller's Online Chat with Shady Springs High School, April 24, 1998, in which he said one of his two most important accomplishments to help West Virgina was the passage of the Snowe-Rockefeller Amendment; available from http://www.senate.gov/~rockefeller/html/press/releases/1998/tr042498.html; accessed 22 September 1999; Senator Jay Rockefeller, Press Release, "Snowe, Rockefeller Call FCC Action on E-Rate 'Disappointing'; Vow to Continue Fight to 'Connect Students and Classrooms to the Future'," June 12, 1998 available from http://www.senate.gov/~rockefeller/html/press/releases/1998/pr061298.html; accessed 22 September 1999; and "Rockefeller Announces 'E-RATE' Funds for West Virginia," November 20, 1998; available from http://www.senate.gov/~rockefeller/html/press/releases/1998/pr112098b.html; accessed 22 September 1999.

[30] Lawrence Gasman, *Universal Service: The New Telecommunications Entitlements and Taxes*, Cato Institute Policy Analysis No. 310, June 25, 1998. Lawrence Gasman is a senior fellow at the Cato Institute.

[31] David W. Carney, "FCC and CATO Debate Universal Service to the Internet and the Schools & Libraries Corp.," *Tech Law Journal* (May 13, 1998); available from http://www.techlawjournal.com/telecom/80513.htm; accessed 22 September 1999.

[32] *See* American Library Association, *ALAWON*, 7, no. 59 (June 5, 1998); available from http://www.ala.org/washoff/alawon/alwn7059.html; accessed 22 September 1999, and *ALAWON*, 7, no. 62 (June 9, 1998);

available from
http://www.ala.org/washoff/alawon/alwn7062.html; accessed 22 September 1999.

[33] *See* Web site at
http://impeachclinton.com/proceedings/goretax.htm; accessed 22 September 1999.

[34] The White House, Press Release, "Vice President Gore Announces Up To 47,000 Schools and Libraries to Receive Funds to Connect Children to the Internet," 23November 1998.

[35] For a discussion of the re-introduction of these bills, *see* David W. Carney, "Tauzin and Burns Re-Introduce Bills to Reform E-Rate," *Tech Law Journal* (May 12, 1998); available from
http://techlawjournal.com/educ/19990512.htm; accessed 22 September 1999.

[36] Office of Rep. Billy Tauzin, Press Release, "Tauzin Unveils Plan to Cut Taxes, Save Schools and Libraries Program," July 23, 1998.

[37] David W. Carney, "Tauzin and Burns Re-Introduce Bills to Reform E-Rate," *Tech Law Journal* (May 12, 1998); available from
http://techlawjournal.com/educ/19990512.htm; accessed 22 September 1999.

[38] Sen. Conrad Burns, Press Release, "Introduction of E-rate Bill," May 11, 1999.

[39] Texas Office of Public Utility Counsel, et al. v. FCC, No. 97-60421 (5th Cir., 1999); available from
http://www.ca5.uscourts.gov/opinions/pub/97/97-60421-cv0.htm; accessed 22 September 1999.

[40] *See* David W. Carney, "Fifth Circuit Upholds FCC's E-Rate Program," *Tech Law Journal* (August 1, 1998); available from
http://www.techlawjournal.com/educ/19990801.htm; accessed 22 September 1999, and American Library Association, *ALAWON*, 8, no. 79 (August 3, 1999); available from

http://www.ala.org/washoff/alawon/alwn8079.html; accessed 22 September 1999.

[41] John Borland, "E-rate under new attack in Congress," *CNET News.Com*, February 1, 1999, available at http://news.cnet.com/news/0-1005-200-338066.html; accessed 22 September 1999; John Borland, "Phone fee fight may threaten Net subsidies," *CNET News.Com*, May 24, 1999, available at http://news.cnet.com/news/0-1004-200-342839.html; accessed 22 September 1999; and Courtney Macavinta, "Irate over e-rate," *CNET News.Com*, May 27, 1999, available at http://news.cnet.com/news/0-1005-200-343020.html; accessed 22 September 1999.

[42] Courtney Macavinta, "E-rate wins praise for 1998," *CNET News.Com*, March 1, 1999, available at http://news.cnet.com/news/0-1005-200-339353.html; accessed 22 September 1999.

[43] The authors of the report conceded that at the classroom level, however, poorer schools still lagged in connectivity, with only 39 percent online.

[44] David E. Rosenbaum, "Phone Fee for School Internet Service Seems to Be Too Popular to Overturn," *New York Times*, August 15, 1999.

[45] Ibid.

CHAPTER 5
ANALYSIS AND CONCLUSIONS

This dissertation examined the political influence on the Federal Communications Commission (FCC) as it conducted the schools and libraries portion of its universal service rulemaking from March 1996 to May 1997. The program that resulted from this rulemaking is called the "E-Rate Program" and it provides discounts to public institutions, namely schools and libraries, to purchase telecommunications services, Internet access, and the internal connections ("inside wiring") to network the institution's computers and computer equipment.

The FCC did not, by itself, develop the E-Rate Program within its 15-month rulemaking proceeding. The entire "telecommunications issue network" influenced the program's development over the course of three distinct periods from 1992 through 1999. In fact, the issue network continued to influence the program's implementation even as this research was completed. An issue network is composed of groups and individuals representing government, industry, and public interests that share expertise on a policy area and frequently

exchange information.[1] The telecommunications issue network, specifically, was composed of groups and individuals from government (e.g., the FCC, Congress, the White House, as well as individual members of these groups), industry (e.g., local and long distance companies, cable companies), and public interest groups (PIGs)(e.g., the Benton Foundation, the American Library Association).[2]

Period I, from July 1992 through March 1996, was marked by an increasing awareness of advances in telecommunications services and applications throughout the government and the country. In 1992, very few people used the Internet and the World Wide Web ("Web") had not yet been invented. By 1994, the Internet was becoming more popular, with many more people "getting online." Finally, by the time President Clinton signed the Telecommunications Act of 1996 ("the Act"), the ceremony was *shown* over the Web.

The most significant event of this period was presidential candidate Bill Clinton's selection of Senator Al Gore as his running mate. Gore's commitment to high-technology issues in general and to the Internet in particular began the buildup toward the development of the Snowe-Rockefeller-Exon-Kerrey ("Snowe-Rockefeller")

amendment, which was the legislative mandate contained in the 1996 Act, for the E-Rate Program. Indeed, the Clinton Administration played a very strong leadership role in developing the atmosphere in which the Snowe-Rockefeller amendment was introduced and passed.

Period I also brought increasing levels of participation by PIGs. Although these groups provided information to their constituencies throughout the period, they significantly stepped up their advocacy programs by the beginning of 1995. For example, the American Library Association (ALA) opened its Office of Information Technology Policy in 1995 because it determined it needed a more focused approach to promote its positions.

What is also apparent from the documentation from Period I is that the telecommunications industry was focused on very different goals than the public interest community. Industry had billions of dollars at stake during the development of the 1996 Act, and those issues did not revolve around universal service. The future livelihood of their corporations rested on the inclusion or exclusion of a couple of words in the Act. Specifically, the long distance companies and the incumbent local exchange companies (ILECs) were primarily

concerned with the requirements that would be laid out concerning ILEC entry into long distance service. For them, universal service for schools and libraries was simply something they would have to consider later, specifically, during the FCC's rulemaking.

The events of Period II, from March 1996 through May 1997, were quite routine in comparison with the events of Period I. The FCC was certainly subject to pressure through *ex parte* communications during the rulemaking (in addition to filed comments). Most activities revolved around submitting comments and, for PIGs and government supporters, developing an issue environment conducive to an expansive interpretation of the Snowe-Rockfeller Amendment. Although industry for the most part submitted comments stating that only telecommunications services could legally be included in any discount program, its opinions, based on what the FCC developed as its final rules, obviously did not have much weight at the FCC as the comments of the public interest groups. Instead, the FCC implemented an expansive E-Rate Program.

During Period III, from May 1997 though September 1999, some issue network members demanded accountability from the FCC for its actions. The apparent fate of the E-Rate changed each year during this period. Opponents

appeared to have been successful during 1998 and into 1999 in dubbing the program an illegal tax, and they were poised to dismantle the program. Even when public opinion eventually supported the program, however, instead of accepting defeat, opponents relabeled the program as "pork."

Still, in spite of opponents' successfully labeling the E-Rate an illegal tax, it is still "alive and well" and the Universal Service Administrative Company recently sent commitment letters to recipients for future funding. Ultimately, the program appears finally to have won favor with the public because it has increased the level of Internet access in schools across the country.

The remainder of this chapter examines the data presented in Chapters 2, 3, and 4 in the context of the theories of rulemaking laid out in Chapter 1. Additionally, it discusses the limitations of the study as well as suggestions for future research.

Kerwin's Rulemaking Criteria

The schools and libraries portion of the universal service rulemaking conformed to the Administrative Procedure Act's requirements that an agency provide and

collect information, encourage diverse public participation, and allow itself to be held publicly accountability (see Chapter 1, pages 7-13).

Information

The FCC could not be accused of failing to provide or gather sufficient information in this case. The FCC issued its original Notice of Proposed Rulemaking (NPRM) and established the Federal-State Joint Board on Universal Service in May 1996 and then gathered comments and reply comments, as required. Later that summer, the FCC issued a Further Notice of Proposed Rulemaking, in which it posed a number of specific questions about how to interpret the statutory language of the 1996 Act and asked for comments and reply comments. Then, in December 1996, the Joint Board issued its Recommended Decision, and comments and reply comments were once again gathered for consideration. Finally, more than a year after the original NPRM was issued, the final rules were issued by the FCC in May 1997.

By using the Joint Board, the FCC effectively doubled the amount of information and time available for interested parties to provide information based on their

own ideas as well as on their reactions to other parties' comments. If the FCC had not used the Joint Board, the final rules would have been issued around the time the Joint Board released its recommendations. Certainly, considering the contents of the Recommended Decision, no one should have been very surprised when the final rules were issued, as the two documents were nearly identical.

Participation

Many groups participated in this rulemaking. As discussed in Chapter 1, issue network membership and participation grew for this portion of the rulemaking—many educational and library groups had a keen interest in expanding the universal service concept to include their institutions. If anything, the industry voice during the rulemaking itself was uncharacteristically weak.

At least three explanations, separately or together, are possible: (1) individual industry members of the issue network did not wish to appear "anti-education" or "anti-children"; or (2) the industry as a whole was too preoccupied with the issues at stake in the competition and access reform rulemakings; and/or (3) industry simply

did not consider it a possibility that the FCC would interpret the statutory language as it did. Whatever the reason, the FCC heard from and seems to have listened to PIGs more than it did industry.

Accountability

As stated above, it is hard to imagine that any members of the issue network were truly surprised when the FCC issued its rules. Even so, the FCC was forced to defend its decision to Congress and in the courts. Congress continued to exert its influence by introducing legislation in two consecutive sessions to terminate or modify the E-Rate Program, even though those leading the way have probably realized that their chances of success are slim. Industry has also had its time in court over the E-Rate and it, too, appears to have lost its bid to end the program. Of note, although the court found that the FCC may have overstepped its bounds in creating such a wide-ranging E-Rate Program, it stated that the ultimate blame lay with Congress for passing such poorly written legislation.

Summary

From the data collected, it is clear that the FCC conducted a "textbook" rulemaking, and then some. The use of the Joint Board doubled the time available for comment in the proceeding and even gave a clear view of what the FCC's rules were likely to be a full six months in advance.

No group could claim that the FCC did not provide ample *opportunity* to participate and be heard. However, what is really important in assessing how this rulemaking was conducted is whether the FCC had already decided its course of action and was only "going through the motions" by accepting comments. Further, even if the FCC did listen to all parties equally, the rules themselves provide evidence that it was more sympathetic toward one faction of the issue network, PIGs, than it was toward others, especially industry.

Finally, the FCC was held accountable for its rules. However, the agency had effectively built a strong record that allowed it to defend itself from attacks from Congress and challenges in court.

Furlong's Theory of Influence on Rulemaking

Scott Furlong hypothesized that interest groups' influence on rulemaking could be assessed using 7 criteria (see Chapter 1, pages 13-18). In testing his criteria, he found that only "coalition building" and "level of access" were significant in formal methods such as rulemaking while "organizational type" and "level of access" were significant in informal methods such as meeting with agency staff. Emphasis on rulemaking, policy type, group legitimacy, and organizational size were not significant. Each element of Furlong's theory is discussed below as it relates to the data collected in this study.

Emphasis on Rulemaking

Although Furlong did not find a group's "emphasis on rulemaking" to be significant, it is relevant in discussing this case. Even though the FCC appears to have been "predisposed" to developing the rules it finally adopted, the comments that were filed constituted a strong case for the record if a challenge arose on the grounds that the FCC did not solicit adequate

participation. Further, industry, for the most part, treated this part of the rulemaking as almost ancillary to the "real" issues of universal service and provided little more than rote opposition to expanding universal service for public institutions to include more than telecommunications services.

Most of the PIGs that participated in the schools and libraries portion of the universal service rulemaking do not usually participate in FCC proceedings. Such a high level of participation by non-traditional groups may have had an influence on the FCC. However, if Furlong's findings are correct, one can only conclude that it was the predisposition of both the Joint Board and the FCC to an expansive interpretation of the schools and libraries language in the 1996 Act that caused the rules to turn out as they did.

Coalition Building

"Coalition building" was one of the two criteria Furlong found to be significant in formal methods, and this case supports that finding. The Education and Libraries Network Coalition (EdLiNC) established itself as a powerful force during the rulemaking. It rallied

its members and, more importantly, presented a unified front to policymakers. Instead of the usual infighting between education groups, most notably between private and public schools, they stayed focused.[3] Industry, on the other hand, did not form any coalitions to focus on this matter.

Organizational Type

Furlong found "organizational type" to be significant in informal methods such as lobbying—specifically, that business interests usually win out over non-business interests. In this case, however, industry was not the dominant party, PIGs were. This is not always true at the FCC, but a variety of explanations can be offered for why this occurred in this case. First, education groups were successful from the beginning—going back to the development of the legislation—in co-opting the agenda. Instead of allowing opponents to describe the amendment as just another layer of bureaucracy and regulation, they provided their own spin—"teaching our children for the future."

A second—and better—explanation of why PIGs influenced the rules so significantly is that the key government players involved, from Senators Olympia Snowe (R-ME) and Jay Rockefeller (D-WV) who wrote the language in the 1996 Act, to Reed Hundt, FCC Chair at the time of the universal service rulemaking, had a personal interest in the E-Rate that coincided with the goals of the PIGs. This explanation obviates the question of whether organizational type was significant in this case. Instead, it means that the message was the important factor, not the messenger.

Policy Type

"Policy type" was not significant in Furlong's study and was not significant in this research, either. Under Furlong's criteria, the E-Rate would be considered a redistributive policy[4] and would therefore provide the least possibility for influence. In this case, it seems that if there was little room for influence, it was because those making the decisions had already decided what they wanted to do, not because of the policy type under consideration.

Access

The "level of access" held by a group was significant in both formal and informal methods of influence. Similar to the analysis offered in the case of *organizational type*, PIGs may have had more *de facto* access simply because they advocated the position in favor with the majority at the FCC, especially with its Chairman. Additionally, industry did not offer new ideas in this area, focusing instead on other aspects of the rulemaking.

It seems that in this case, access was certainly important, but that access is in large part determined by what the agency in question wants to hear. In this case, schools, libraries, and other public interest groups held the favored position and therefore they had more *de facto* access.

Organizational Size

Furlong did not find "organizational size" to be significant element of the rulemaking process. It does not appear to have been significant in this case, either. EdLiNC was a very large coalition composed of nearly 40

smaller groups, and the telecommunications industry is also a large interest block, so this research again supports the assertion that the ability to form coalitions is important.

This criterion might have appeared to be a factor if EdLiNC had not existed as an umbrella for the PIGs. If each of its members had filed individual comments—if, indeed, they would have even been in a position to do so—the results may have been different. Specifically, although EdLiNC was able to present a single proposal representing nearly 40 groups, if all those groups had submitted individual and probably conflicting comments, the FCC might not have felt it had enough support to develop the rules the way it did. For example, public and private schools often have conflicting interests, so if they had submitted conflicting comments, the FCC might have been left with only a choice of whether to support public or private schools, which would have been a difficult position for the Commissioners. Unfortunately, since the two primary groups at odds with each other in the rulemaking, EdLiNC and industry, are two different *types* of issue network members, it is difficult to compare their influence.

Summary

The findings of this study generally support Furlong's findings. However, the overriding finding here is that it is the will of those in charge to implement the policies they favor that matters most. Yes, one could attribute the success of education and library groups in this matter to their ability to form a large coalition supported by all factions of the public interest community. However, the evidence strongly suggests that a number of powerful individuals actively developed the E-Rate Program according their own plans, disregarding input opposed to it.

Berry's Issue Network Theory

Issue networks are composed of groups and individuals representing government, industry, and public interests that share expertise on a policy area and frequently exchange information.[5] They can be described as "shared knowledge groups" or a set of organizations and/or individuals "that share expertise in a policy area and interact with each other over time as relevant issues are debated."[6] In short, issue networks are dynamic—

alliances shift rapidly, new groups enter them easily, and network boundaries are never fixed. Issue networks often change from case to case. Further, issue networks are marked by conflict and affected, oftentimes greatly, by partisan change.

Issue networks have four identifiable properties (see Chapter 1, pages 18-21). First, an issue network is said to have a *hollow core* because no central lobbying group acts as a broker among most of the other groups in the network or coordinates all the major interest group activity. The *hollow core* exists because of both ideological differences among groups as well as the presence of so many issues that no single group could possibly provide protracted leadership on them all.

Second, issue networks have multiple niches. Most individual groups are narrowly focused and operate within "issue niches," interacting primarily with those groups representing similar interests.

A third criterion of issue networks is that a high value is placed on issue expertise ("*the importance of being expert*"). Apart from the high-profile lobbyists that generate most of the news headlines about their profession, the majority of lobbyists rely on extensive knowledge of their issue area to maintain access to

government policymakers. Recognition as an expert is increasingly important as issues grow more and more complex and competition from other groups that focus on the same area increases.

Finally, issue networks have *sloppy boundaries*. The boundaries of issue networks are constantly changing—a group need not be a central player in the network to be recognized as a member; it need only develop a relationship with one group already in the network. Boundaries are also loose because issue areas often overlap and no central authority exists to exclude new groups.

Hollow Cores

The issue network in this case can easily be characterized as having a *hollow core* because no single group or individual in the network acted as a broker among the others. One might initially consider EdLiNC to be a broker, but this was not the case, as EdLiNC only represented the views of the public interest community and did not "broker" compromises or deals with other issue network members.

This lack of central broker is further highlighted by another characteristic of issue networks, the presence of inter-group conflict rather than mutual accommodation, which would be found in a subgovernment. The rulemaking itself offers an example of this conflict. Instead of meeting together to work out a possible compromise, various factions of the network worked to ensure their views were the ones adopted by the FCC. This case offered a situation in which there was clearly no possibility of compromise.

Multiple Niches

The telecommunications issue network also demonstrated the second property identified by Berry, *multiple niches*. Within the network, for example, some groups were more interested in issues related to competitive positioning (i.e., industry), while others were more interested in issues related to providing access to schools and libraries. However, all these groups were still part of a single issue network. Perhaps the dominance of the PIGs can be explained by their dominance of the education and library niche. Not only was this not the niche of industry members, but they

were generally more interested in other aspects of the universal service proceeding.

Importance of Being Expert

Another explanation for the PIGs' dominance in the schools and libraries issue "niche" within the network is the concept of the *importance of being expert*. Expertise in one's niche is highly valued by administrative agencies. The schools and libraries experts that participated in the rulemaking and in the larger network activities displayed not only an expertise in the area of education in general, but specifically in technology. This must have given them considerable credibility at the FCC as it grappled with how to implement the Snowe-Rockefeller language. That they were advocating the very position that the FCC seemed intent on implementing could not have hurt their cause.

Sloppy Boundaries

Finally, this study supports the concept that issue networks have *sloppy boundaries*. If subgovernment theory were being argued, it would be difficult to explain the

easy entrance of school and library groups into the network—not to mention how difficult it would be to explain their dominance in the process. However, issue network theory holds that the boundaries of a network are not fixed and groups may join or leave the network easily, which was exactly the case in this study.

Summary

Issue network theory proved very useful in examining the development of the E-Rate; however, it could not explain everything that occurred in this case. Neither the impact of personal agendas, in which individuals fought to frame the debate in their own terms, nor a certain sense that the "planets were aligned" to make the E-Rate happen could be explained within the context of issue network theory. The additional theories outlined in Chapter 1, symbolic politics and mobilization of bias, fill this gap.

The Role of Symbolic Politics and Mobilization of Bias in the Issue Network

Although administrative rulemaking is considered one of the most inclusive and open processes of government,

requiring that input be considered from all interested parties, the evidence in this case, while supporting the letter of that requirement, does not support its spirit. For the most part, the rulemaking in this case adhered to all the requirements of the frameworks presented. It satisfied all the criteria described by Kerwin; it generally supported Furlong's findings that coalition building and level of access were the only factors that mattered in influencing rulemaking; and it satisfied all of Berry's elements of issue network theory. However, none of the three tools used in analyzing this case provided a satisfactory answer to the primary research question: how political influence affected the schools and libraries portion of the FCC's universal service rulemaking. Both Edelman's theory of symbolic politics and Schattschneider's theory of the mobilization of bias successfully fill this void.

In answer to the primary question as to how political influence affected the schools and libraries portion of the FCC's universal service rulemaking, it would certainly appear that because of the positions of those in charge of developing and implementing the E-Rate Program, some groups were "more equal" than others. These individuals, with the help of supporting groups,

did mobilize bias in favor of the E-Rate. They were able to do this by framing the terms of the debate, successfully defining the symbols used. Their side was "pro-child" and "pro-education." Anyone against them, therefore, would be "anti-child" and "anti-education," something no legislator wants to called. The role of both symbols and mobilization of bias continued long after the universal service rules were issued. Those opposed to the E-Rate were successful, at least for a while, to redefine the E-Rate as an "illegal tax," and even worse for one of the primary champions of the program, as the "Gore Tax." However, as discussed in Chapter 4, those efforts were ultimately unsuccessful.

The issue network during this "niche" proceeding was very different than it usually is, and as noted above those differences have persisted since the rules were issued. The public interest community stormed the network in the period leading up to the rulemaking and never left. During the rulemaking, the public interest community never lost the upper hand in the network. Of course, it did not accomplish its goals without assistance. Without individuals in certain key positions who were not only sympathetic but also passionate about the goals of the E-Rate Program, it would not have been

implemented as it was. Further, the relationships between these groups were not what would be considered "normal" issue network relationships.

One explanation for the PIGs' success is that they supported the opinions and goals of key individuals in government who wanted to adopt an expansive rather than limited E-Rate Program. In this case, as stated earlier, the opinions that mattered most were those of the key government supporters such as Vice President Gore, Education Secretary Riley, FCC Chairman Hundt, and Senators Snowe and Rockefeller. Public interest groups supported the same goals so their opinions may have seemed to matter more than those of industry. In fact, though, it was these issue leaders who molded the program. This was true both as the issue environment developed prior to *and* during the FCC's rulemaking.

So, although it may have appeared that PIGs influenced the FCC, it is much more likely that the FCC would have developed the rules it did with or without the comments of the public interest community. This is not to say that the public interest community did not contribute a wealth of ideas to the FCC as it developed its rules—it did; however, this community did not have

as much influence on the "big picture" as it might initially appear.

The FCC exerted a lot of influence on the rulemaking process through Chairman Hundt, even though the Commission was technically the "target" agency in the rulemaking. In his many speeches, Hundt made his intentions known about implementation of the E-Rate. Not once did he ever suggest that internal connections to classrooms and libraries were not a critical component of the program.

The above findings can be explained as the result of the mobilization of bias in favor of the E-Rate. As stated in Chapter 1, although industry usually has the upper hand in mobilizing bias, this case has proven that the public interest community, if it has the dedicated assistance of a few key issue champions in high places, can overcome that tendency. Observers might be tempted to attribute the success of E-Rate supporters to the relative lack of effort to mobilize bias on the part of industry. However, when examined through the discussion of symbolic politics theory above, it becomes clear that industry had little choice but to remain silent or risk being branded as "anti-child."

Indeed, this case should remind observers and analysts of the rulemaking that government actors not officially involved in the rulemaking often affect it by promoting their own agendas by defining the symbols in the debate and mobilizing bias in favor of their position. Specifically, actors such the as lawmakers who write the originating laws and members of the executive branch, including those in the supposedly "target" agency, can play very significant even without participating in the rulemaking process itself.

Conclusion

Administrative rulemaking is a far more complex and interesting process than most researchers acknowledge. Theory describes rulemaking as a "clean" process, one in which agencies and interested parties participate according to the "rules." However, aside from the artificial constraints of the beginning and end of the rulemaking period, it is impossible to separate that aspect of issue network activity from other issue network activity. In fact, in assessing political influence, one must examine the non-rulemaking activities that take place before, during, and after the rulemaking.

This study was originally intended to analyze the political influences on the FCC during the schools and libraries portion of the universal service rulemaking in 1996. However, as research continued, it became apparent that to exclude a discussion of the development of the telecommunications issue network during the years leading up to the rulemaking would exclude a significant discussion of how the issue environment developed in this case.

First, a discussion of the development of the Snowe-Rockefeller amendment to the Telecommunications Act of 1996 ("1996 Act") was added. Even that seemed inadequate to explain the issue environment by the time the FCC started its rulemaking, so a discussion of how the Clinton candidacy and Administration affected the issue environment was added as well. Later, it also became apparent that the time *after* the rulemaking was also very important to understanding the issue environment.

In short, the periods before and after the rulemaking ended up being as important to the story as the rulemaking itself. In retrospect, it would be impossible to examine the rulemaking outside the larger context of the development of the legislation and the political gaming that ensued after the rules were issued.

To say that the rulemaking was inconsequential in the larger scheme of the ebb and flow of the issue environment would be an overstatement. However, when one examines the rulemaking within this larger context, it is obvious that it was only a piece of the political games taking place within the issue network.

Limitations of This Study

It is not possible to examine every aspect and activity of an issue network. It is only possible to examine a piece of the mosaic and extrapolate generalized findings. These findings may or may not be applicable to other cases.

The study was also limited by the information available. Information from government and PIG members was far more available than information from industry members. Industry did not issue news releases about their activities nor did they develop newsletters, as the ALA and Computer Professionals for Social Responsibility did, to update people about what was happening within the issue network. This is likely because either (1) industry did not want to advertise its opposition to a program aimed at assisting schools and libraries, and

therefore children, or (2) perhaps industry, unlike government or PIGs, did not feel they had "constituencies" to keep informed.

Suggestions for Further Research

Further investigation into political influence on other government members of the issue network, namely the executive and legislative branches, would provide further insight into how members of the network influence each other. For example, one could examine the development of the Snowe-Rockefeller Amendment in greater detail than was done in this research, giving a full examination of the influence of PIGs on Congress as well as why industry chose to remain silent during the legislative process.

Additional research into other FCC rulemakings would also be helpful, especially an investigation into the inter-group dynamics in those rulemakings, in determining whether this was a usual or unusual case. Also, investigating whether other issues require an examination of more than just the relevant rulemaking would provide information as to whether rulemaking can, in fact, be assessed on its own or not.

Third, research into industry activity during this time would also be useful. Except for the actual rulemaking and the lawsuits filed against the rules, tracking industry activity was very difficult in comparison to PIG activities. Almost no record of industry activity is available publicly, except for the stories published by third parties—the press as well as PIGs such as the ALA. The only other record available is the comments filed in the proceeding, but these are generally devoid of any discussion of political intent.

Finally, additional research into whether other theories might further strengthen issue network theory is warranted. Issue network theory is an excellent—and possible the best—theory for analyzing interest group activity, but as has been demonstrated in this study, it is not perfect. Additional case studies could improve it even more.

Notes

[1] Jeffrey M. Berry, *The Interest Group Society*, 3d ed. (Boston, MA: Scott, Foresman, 1996), 196-199.

[2] See Chapter 1 (pages 29-35) for an in-depth description of the telecommunications issue network.

[3] Jeff Burnett, National Association of Independent Schools, interviewed by author, 20 October 1997, Washington, DC, tape recording.

[4] The program requires long-distance companies to collect funds from their customers to be provided to schools and libraries.

[5] Berry, *Interest Group Society*, 3d ed., 196–199.

[6] Ibid.

APPENDIX A
KEY INFORMANTS INTERVIEWED

Name	Organization at Time of Interview*
Ayward, David	National Strategies
Bernstein, Jon	National Education Association
Blau, Robert	BellSouth
Bradley, Lynn	American Library Association
Burnett, Jeff	National Association for Independent Schools
Byer, David	Software Publishers Association
Casserly, Jim	Federal Communications Commission, Office of Commissioner Susan Ness
Esherick, Mark	MCI
Feuerstein, Donald	US Department of Education
Flaherty, John	Podesta Associates
Joseph, Kevin	Senate Commerce Committee
Kent, Linda	United States Telephone Association (now United States Telecom Association)
Magpantay, Andrew	American Library Association
McConnaughey, Jim	National Telecommunications and Information Administration, Office of Plans and Policy
Nelson, Michael	Federal Communications Commission, Office of Plans and Policy
Pryor, Barbara	Office of Senator Rockefeller
Roberts, Linda	US Department of Education
Rohde, Greg	Office of Senator Dorgan
Rosenthal, Sylvia	Alliance for Public Technology and Issue Dynamics
Shobert, Kathy	GCI Telecom/Drinker Biddle & Reath
Simon, Greg	Simon Strategies
Van Hook, Kristin	Simon Strategies
Waltzman, Howard	Office of Senator Brownback
Wheeler, Tom ??	Cellular Telecommunications Industry Association
Windhausen, John	Office of Senator Hollings (at the time of the development of the 1996 Telecommunications Act)

*Unless otherwise noted.

APPENDIX B
DETAILED INTERVIEW/DOCUMENT REVIEW QUESTIONS

1. Who are the members of the telecommunications issue network?

   - For general telecommunications issues, who are usually the members of the telecommunications issue network, including government, industry, public interest, and other groups.

   - Was the membership of the telecommunications issue network as it existed for the universal service proceeding for schools and libraries different than usual? If so, why?

   - Who are the most influential participants in the telecommunications issue network? Are they, in general, the most influential entities in the FCC rulemaking process? Were these entities the most influential entities in the part of the universal service proceeding dealing with schools and libraries?

2. How did the members of the issue network interact during this rulemaking?

   - How did various individuals from different interest groups characterize the rulemaking? What was the role of their organizations in the part of the universal service rulemaking dealing with schools and libraries.

   - How did various individuals from different interest groups define the "other side" in this proceeding? How did they characterize the actions of those groups?

- How did various individuals from different interest groups characterize the interactions between groups (friendly, adversarial)?

3. How was this rulemaking similar/dissimilar to other FCC rulemakings?

   - What groups or individuals were most often named as working most closely with the FCC during the rulemaking? How about for the portion of the universal service rulemaking dealing with schools and libraries?

   - Was the part of the universal service rulemaking dealing with schools and libraries different from the rest of that rulemaking? If so, why?

   - Was the part of the universal service rulemaking dealing with schools and libraries different from other FCC rulemakings? If so, why?

     - Could the differences be explained by the added participation by non-TIN members?

     - Could the differences be accounted for by the use of a Federal-State Joint Board?

4. What is the current "telecommunications issue environment"?

   - Given the previous interest shown in this issue by the Executive branch—especially Vice President Gore's involvement and the fact that Reed Hundt was the FCC Chair at the time—was the end result of the rules for schools and libraries a foregone conclusion before the proceeding even began?

   - Is the FCC's interpretation of the Snowe-Rockefeller Act better characterized as broad or narrow?

   - What person(s), groups, or events influenced the FCC's interpretation of the language of the Snowe-Rockefeller Act. How?

   - What circumstances and/or events could have created the environment that allowed the Snowe-Rockefeller

Amendment to be a viable piece of legislation in 1995?

- What impact, if any, did the Clinton Administration have on the telecommunications issue environment?

- Why were the Joint Board and the FCC able to come to a nearly unanimous decision on the schools and libraries issue?

- What is the future of these rules? What will happen because of them?

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BIOGRAPHICAL SKETCH

Patricia Figliola Lewis is currently the Director of Internet and Data Activities at the United States Telecom Association (formerly the United States Telephone Association). She has also held positions as a director of public policy at AT&T (and Teleport Communications Group prior to its merger with AT&T) and as a senior telecommunications policy consultant at Booz-Allen & Hamilton. She also served as a cryptologic officer in the United States Navy, specializing in communications operations in support of an ocean surveillance system. Dr. Lewis also holds a B.S. in computer science from Villanova University (1986) and an M.S in telecommunications management from the University of Maryland (1994).

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.

David H. Ostroff, Chair
Professor of Journalism and Communications

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Milagros Rivera Sanchez
Associate Professor of Journalism and Communications

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Bill F. Chamberlin
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Rodman B. Webb
Professor of Educational Psychology

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Albert R. Matheny III
Professor of Political Science

This dissertation was submitted to the Graduate Faculty of the College of Journalism and Communications and the Graduate School and was accepted as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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Dean, College of Journalism and Communications

Dean, Graduate School